



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 11 अप्रैल, 2023 / 21 चैत्र, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 03rd February, 2023

No. Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased

to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	07/17	Devender Kumar	E.E. HPPWD, Sunder Nagar	15-12-2022
2.	111/17	Geeta Devi	Principal, Dental College	15-12-2022
3.	112/17	Suresh Kumari	Principal, Dental College	15-12-2022
4.	110/17	Tara Devi	Principal, Dental College	15-12-2022
5.	462/16	Kishan Lal	HPSEBL, Sunder Nagar	15-12-2022
6.	465/16	Devender Kumar	HPSEBL, Sunder Nagar	15-12-2022
7.	463/16	Bali Bahadur	HPSEBL, Sunder Nagar	15-12-2022
8.	609/16	Bihari Lal	E.E. HPPWD, Shimla	15-12-2022
9.	467/16	Bhag Singh	D.F.O. Suket	15-12-2022
10.	329/16	Tara Chand	D.F.O. Suket	15-12-2022
11.	835/16	Khem Singh	D.F.O. Suket	15-12-2022
12.	195/15	Sita Ram	E.E. HPPWD, Bilaspur	15-12-2022
13.	78/19	Amit Kumar	M.D. OPPO Mobiles	20-12-2022
14.	30/20	Ankush	Govt. Medical College Chamba	31-12-2022
15.	36/20	Vijay Kumar	Govt. Medical College Chamba	31-12-2022
16.	87/17	Nek Raj	E.E. I&PH Dalhousie	31-12-2022
17.	79/18	Asho Ram	E.E. HPPWD, Bharmour	31-12-2022
18.	18/19	Gujro	D.F.O. Chamba	31-12-2022
19.	288/15	Krishan Lal	D.F.O. Suket	31-12-2022
20.	190/17	Rahul Gupta	H.P. Housing & Urban Dev.	31-12-2022

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 07/2017

Date of Institution : 05-01-2017

Date of Decision : 15-12-2022

Shri Devender Kumar s/o Shri Bhagat Ram, r/o Village Saur, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P.*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of the services of Shri Devender Kumar s/o Shri Bhagat Ram, r/o Village Saur, P.O. Batwara, Tehsil Sunder Nagar, District Mandi, H.P. during May 2000 by the Executive Engineer, Sunder Nagar Division, H.P.P.W.D. Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 20-07-2015 after delay of more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as made out from the claim is that he has worked in between 1998 to 2000 with the respondent as daily waged beldar and his services were terminated by the respondent verbally in the year 2000 and he was subjected to unfair labour practices. As per the petitioner, fresh hands were engaged by the respondent in several years without giving him priority. He has mentioned the details of such workmen in para no.3 of the claim and submitted that as many as 92 juniors/fresh hands were engaged/retained, whereas, his services were terminated and he was not re-engaged. As per the petitioner, the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Act, hence, the claim be allowed and order of reinstatement with all the benefits be passed in his favour.

3. The respondents has resisted and contested the claim and submitted that the petitioner has worked w.e.f. March to May 2000 and thereafter left the work at his sweet will. The petitioner is said to have raised the demand only in the year 2015 and when the appropriate Government refused to refer the matter he filed Writ Petition, where after, the reference was filed. It is denied that any junior was retained or any fresh hand was engaged. The petitioner is said to has neither named any such workmen nor provided their parentage or address. The petitioner is said to have not worked for 240 days in a calendar year preceding his termination, and the respondent has, therefore, prayed for dismissal of the claim.

4. The petitioner has filed rejoinder wherein he submitted that the names of juniors workmen have been mentioned in the seniority list attached with the claim hence, he has a good case on merits.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 17.7.2018:—

1. Whether termination of the services of the petitioner by the respondent during May, 2000 is/was legal and justified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition suffers from vice of delay and laches as alleged? . . .*OPR*.

Relief

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No.4	: No
Relief	: Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 4:

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has appeared as PW1 in the witness box and his mandays chart has been tendered as Ext.RW1/B by the respondent. As per this mandays chart he has worked in between March to May 2000 for total 60 days. The petitioner has although sworn his affidavit Ext.PW1/A to show that he had been working with the respondent since the year 1998 but no concrete material has been placed by him on the record to prove this fact. He could have placed on record any document prepared by him as an evidence of his work with the respondent. He has not examined any other witness including any villagers or family members to prove that the petitioner was working with the respondent since the year 1998 continuously. When such is the position, it can not be said that the petitioner has worked w.e.f. 1998 to 2000 with the respondent as the documents proved on the record by the respondent reveals entirely a different position. When the petitioner is proved to have worked only for 60 days with the respondent, therefore, violation of Section 25-F is not made out as there is requirement of minimum 240 working days in preceding 12 calendar months before any such termination by the respondent.

10. The petitioner has alleged the violation of Sections of 25-G and 25-H of the Act and relied upon the seniority list Ext.RW1/D. The petitioner is proved to have started working since March 2000 and having left his job in May, 2000. The seniority list Ext.RW1/D shows that the workmen from serial no.72 onward have been engaged in the year 2000. There are workmen shown from serial no.96 onward who have been engaged in later years. When this seniority list is carefully examined it is not clear as to in which month Shri Sukh Ram beldar (serial no.72) was engaged in the year 2000. Similarly Shri Hirda Ram (serial no.73) though shown to have been engaged in the

year 2000 yet it is not known whether he was senior to the petitioner or his junior as details have not been given on the record. The petitioner has also not taken the pains to depose that these two workers were junior to him. Rest of the workmen shown on this seniority list have either been engaged by the orders of the court or on compassionate grounds. The petitioner can not claim any parity with the workmen who are engaged on compassionate grounds as such workmen are engaged for the reasons that either of their parent or husband or wife had been working with the department since long and on account of his/her death, need had arisen to give employment to his kith and kin so that family could be supported after the loss of life in the earning member of the family. The petitioner can not therefore, claim parity with those workers who were engaged on compassionate grounds. It is clear from the list that many workmen have been engaged in accordance with the directions passed in the Original Applications filed before Hon'ble Administrative Tribunal. It also means that the workmen were engaged in year 2000 for the reasons that their services were terminated earlier in time and they had approached the court and the court had found favour in their contentions. Thus there are no workmen shown in this seniority list who was engaged after the petitioner in the year 2000 except those discussed hereinabove. Thus the petitioner can not succeed in the plea that the workmen junior to him were retained and fresh hands were also engaged after his termination, for the reasons discussed hereinabove. Engineer D.R. Chauhan has sworn his affidavit Ext.RW1/A and he has categorically stated about the relevant facts in the same. When he was subjected to cross-examination no name of any workman was not specifically put to him alleging that such a workman was junior to the petitioner. Therefore, the petitioner has not been able to take any advantage from the statement of Shri D.R. Chauhan, Executive Engineer, HPPWD Sunder Nagar.

11. In the aforesaid facts and circumstances it is also not material whether the petitioner has left the work at his own and his services were terminated. Otherwise also, the plea of abandonment is not established by the respondent as no notice or any other document has been produced on the record which was ever addressed to the petitioner with he remained absent asking him to come forth and resume his duties. The statement of petitioner is deficient in establishing the allegations and it is not established that the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Act. Claim petition is however maintainable as it has been filed in support of the reference. The petition is not vitiated on account of delay and laches in this case as the law is settled to the effect that there is no limitation to approach the authorities by the workman. It is further settled that the court has to mould the relief in case the delay in approaching the authority is substantial. Since violation of Sections 25-F, 25-G or 25-H of the Act is not established this issue regarding delay and laches remains merely academic. The petitioner is held not entitled any relief. Issues no.1 and 2 held against the petitioner and issues no.3 and 4 are held against the respondent.

RELIEF

12. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 111/2017

Date of Institution : 21-6-2017

Date of Decision : 15-12-2022

Smt. Geeta Devi w/o Shri Suresh Pal, r/o House No.268/11, Suhara Mohalla, P.O. Purana Bazar, Sunder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Principal, Himachal Dental College, Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of the services of Smt. Geeta Devi w/o Shri Suresh Pal, r/o House No.268/11, Suhara Mohalla, P.O. Purana Bazar, Sunder Nagar, District Mandi, H.P. w.e.f. 08-07-2015 (as alleged by the workman) by the Principal, Himachal Dental College, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that she was engaged as sweeper by the respondent on 1st January, 2013 and she had been discharged her duties honestly and with dedication. There were no complaints regarding her work and she was member of employees union of the respondent college and paid the contribution in the same and she use to participate in the proceedings of the Union. She was paid Rs. 3300/- per month initially and later on it was increased to Rs. 4000/- w.e.f. 1.11.2014. She was misguided by the management that her EPF was also being deducted by the management as per rules but no EPF receipt number was ever supplied to her. She was paid less than minimum wages prescribed by the Government and she, therefore, requested the respondent time and again to enhance the wages but she was put off or one or other pretext. Three more sweepers namely Shri Hari Ram, Sanju and Narender were also engaged by the respondent and their salaries were also paid as per the standards. The petitioner requested the respondent time and again to pay the minimum wages but nothing was done hence, a joint memorandum was made to Labour Commissioner, Shimla, Labour Officer, Mandi and Labour Inspector Sunder Nagar on 22.6.2015 and the respondent adopted vindictive attitude and orally terminated the service of the petitioner w.e.f. 8.7.2015 without serving her any notice, or paying

any compensation and retaining the juniors. Thus not only the principle of 'first come last go' was violated but other principles of labour law were violated. The petitioner raised the demand with Conciliation Officer Sunder Nagar but amicable settlement could not be had, and therefore, the reference was made by the appropriate Government to this court for adjudication. The petitioner had also approached the authorities under Minimum Wages Act but nothing has been done till date. On such averments, the petitioner has prayed for the relief of her reinstatement with all consequential benefits.

3. The respondent has resisted and contested the petition and taken up preliminary objections of maintainability, cause of action and estoppel. On merits, the respondent has denied the case of the petitioner as incorrect. Some of the allegations have been denied for want of knowledge. Three persons named by the petitioner in para no. 6 of the claim are said to have been engaged on regular basis and there is no parity between them and the petitioner. In nutshell, the respondent has pleaded that neither the petitioner was engaged on daily wages nor she had worked in continuity and nor she was employee of the respondent at any point of time. It is submitted that petition be dismissed.

4. The petitioner has filed rejoinder in which the averments made in the petition are reaffirmed and those made in the reply are denied. It is submitted that several witnesses have appeared before Labour-Cum-Conciliation Officer for an inquiry and it was spoken by them that the petitioner was a workman of the respondent.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 29.5.2018:-

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.07.2015 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner is estopped to file present claim petition as alleged? . . .*OPR.*
5. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
6. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Yes

Issue No. 2 : Affirmative

Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief	: Petition is partly allowed per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1, 3, 4, 5, 6

8. All these issues are taken up together for a sake of evidence and moreover they can be disposed of by single findings for sake of the repetition of evidence.

9. Before the facts of the case and the evidence led by the parties in this case are subjected to close scrutiny and appreciation, it needs to be highlighted that the Industrial Disputes Act is a beneficial piece of legislation having come into the existence to protect the illiterate/semi illiterate labour class who are often subjected to unfair labour practices by the resourceful employers. The purpose of the aforesaid Act is to further ensure that such workmen are not subjected to any type of exploitation by their employers and their rights are properly protected under the law. A complete mechanism has been developed under the Act and the court has to interpret the facts, evidence and other material in a liberal manner so as to serve the cause of justice. Being a beneficial piece of legislation all the presumptions are drawn in favour of the workmen and no presumption can be drawn in favour of the respondent.

10. By and large no labourer lays a fictitious claim of his employment/engagement by any employer as it is difficult to prove the allegations which are false on the face of it. After all, employers against whom false allegations are levelled are always at liberty to lead evidence to prove the claims of the workman as false. There is always some casual connection between the employer and the workmen even in those cases where false claims are made by the workmen. In those cases, also it is for the court to disengage the truth from the falsehood from the material placed before it. In the case in hand, the petitioner has alleged that she was engaged as sweeper w.e.f. 04.4.2009 by the respondent and she was initially paid Rs.3300/- later on Rs.4000/- from 1.11.2014. The respondent, on the other hand, has specifically denied the alleged employment of the respondent. As per the respondent, the petitioner had nothing to do with the respondent college and there was no record regarding her employment with its office. When the petitioner has leveled serious allegations of having worked for years together as a sweeper with the respondent, the respondent could not have taken the allegations so lightly as no person will level allegations to such an extent. The respondent was duty bound to investigate into the matter at its own level and thereafter file a detailed reply in order to bring on the record the motive on the part of the petitioner to lay such a false claim. Not even the single fact has been mentioned in the reply by the respondent which would hint a particular motive on the part of the petitioner to lay such a claim. After all, something must have taken place, which the respondent was duty bound to bring before the court in the shape of the contents of the reply so filed. Since nothing has been said by the respondent, therefore, the conduct of the respondent in simply denying the allegations without any explanation is not acceptable and does not appear to be bonafide. Something is being withheld from this court which this court has to investigate from the material on the record before reaching to any conclusion.

11. It goes without saying that the petitioner has to stand on his own legs and cannot stand on the weakness of the respondent. Being a beneficial piece of legislation, the onus lies upon the petitioner to prove her case to the extent of prima-facie level alone and not more than that. The

petitioner need not to prove her case beyond the standard of every reasonable doubt. She is not even supposed to prove her case to the level of preponderance of the probabilities. The onus immediately shifts upon the respondent as soon as the petitioner succeeds in placing some material to show prima-facie that she had been in the employment of the respondent for long and had worked as sweeper. It is thereafter for the respondent to discharge the onus by bringing every fact that falsifies the case of the petitioner.

12. The petitioner has led evidence on the record which consists of statement of Shri Naresh Kumar, the Labour Inspector Sunder Nagar. He is a very material witness for the purpose of this case. He has stated on oath that an application dated 26.6.2015 (Ext.PW1/A) was received from the petitioner and others complaining that minimum wages were not being paid to them by the respondent. He has tendered the application on the record as Ext.PW1/A. A careful perusal of this application shows that the petitioner and other have levelled allegations against the respondents to the effect that minimum wages were not being paid to them. This notice of this application was served upon the Medical College and the reply to the same was received by Labour Inspector which is Ext.PW1/B. The respondent replied that since the petitioner was not employee of the college, therefore, there was no need to put in appearance before the Labour Inspector. Such reply was filed before other authorities and the copies of the same are Ext.PW1/B, Ext.PW1/C and Ext.PW1/D. An inquiry was conducted by the Labour Inspector into the allegations and he recorded the statement of Dr. Vikas Jindal in this process, copy whereof has been tendered on the record as Ext.PW1/E. In this statement, a vague reference was made by him to the effect that the petitioner and two other sweepers were working with contractor Shri Papu Saini (Shri Hem Raj Saini). He further stated that he was not aware of the fact that as to whether the work of the mess was given to this contractor on outsource basis or not. Shri Ashok Sharma, the Administrative Officer of the college also appeared before the Labour Inspector. His statement was also recorded and the copy thereof is Ext.PW1/F. He also stated that there was no record regarding the employment of the petitioner and other, with the college. He further stated that, in case, the petitioners were ready to give up their claim, they could be given the work through contract agency. Statement of one Shri Lal Singh Chowkidar of college was also recorded which is Ext.PW1/J. He has also supported the case of the petitioner and others before Labour Inspector. Shri Hem Raj Saini also appeared before the Labour Inspector and he also spoke in favour of the petitioner and others. Shri Umesh Kumar, Laboratory Technician also appeared before the Labour Inspector and his statement is Ext.PW1/J. Since these statements were recorded by Labour Inspector, therefore, this court can put the same to the limited use of corroboration of other material as such statements are not recorded on oath and no opportunity to cross-examine these witnesses was afforded to the adversary party.

13. Shri Umesh Kumar (PW2) is a very material and important witness for the purpose of this case. He has stated on oath that he is working with Dental College as Laboratory Technician since 28.10.1999 and he is also the Ex-president of the recognized Himachal Dental College Karamchari Sangh. He also brought some records of the Sangh and stated that as per his record Smt. Tara Devi had joined the Sangh in Mach, 2008, Smt. Suresh Kumari in April, 2009 and Smt. Geeta Devi in January, 2013. He stated further that Sanjay Kumar had joined the association in July, 2014, Hari Ram in July, 2014 and Narinder Kumar in December, 2015 as sweepers. He admitted that his statement Ext.PW1/J was recorded by the Labour Inspector as per his version during the inquiry. This witness, therefore, proved to be a very important witness for the purposes of this case and he not only supported his statement made before the Labour Inspector but also acknowledged the same. He also said about the fact that the petitioner and two others were working with the respondent as sweeper and they had joined the Karamchari Sangh long back. He was cross-examined regarding authenticity of the register but he explained everything. He explained that there were around 65 members of this association. In fact, he was not cross-examined on the material aspects. There is no cross-examination upon him to test his veracity about his claim that he was working as Laboratory Technician in the respondent college. This fact is therefore, admitted

for want of cross-examination on this aspect. It is, therefore, proved that this witness is a regular employee of the college and therefore, his statement inspires more confidence when he speaks in favour of the petitioner. Since he was regular employee of the college and had been the office bearer of the Karamchari Sangh therefore, it is well understood that he knew each workmen personally as he was working for their welfare. There is no cross-examination upon this witness to suggest any motive on his part to speak in favour of the petitioner. There is no denial of the facts deposed by him. He has categorically stated on oath in his examination-in-chief that the present petitioner was enrolled as a worker of the Dental College with him w.e.f. 1.1.2013. There is no denial of this fact in the cross-examination. He has categorically stated that he had participated in the Inquiry conducted by the Labour Inspector and made his statement Ext.PW1/J. There is no cross-examination on the contents of Ext.PW1/J. The statement of this witness, is therefore, very-very relevant for the purpose of this case and prove that the petitioner had been worked as sweeper with the respondent. The respondent has not pleaded at all that the petitioner was employee of the some contractor and the contractor has worked on outsourced basis with the college. No evidence could have been led on the fact not pleaded in the reply.

14. The petitioner has appeared as PW3 in the witness box and her detailed affidavit is Ext.PW3/A. She has pleaded every fact on oath and when she was subjected to cross-examination she admitted that no appointment letter was issued in her favour. She further admitted that no appointment letter was issued to any other worker. This suggestion goes against the respondent. A vague attempt was made to cross-examine this witness by suggesting that the respondent had outsourced the work of sweeping and cleaning of the college to Pappu Saini contractor but she denied specifically. There is nothing in the statement of the petitioner which would prove that she was deposing falsely with ulterior motives. Her case is also fully supported by PW2 Shri Umesh Kumar and his statement has been fully discussed hereinabove. As aforesaid the petitioner was supposed to lead evidence to the prima-facie level. The petitioner has led sufficient evidence and proved by preponderant of probability she had been working with the respondent on daily wages since long and her services were terminated without following the process of law. She has also proved that she was being subjected to unfair labour practices by not taking her signatures in lie of the payment of the salary.

15. The onus had now shifted upon the respondent to prove that the petitioner had no connection whatsoever with the college and her case was utterly false. One Dr. Baljeet Singh (RW1) has sworn his affidavit Ext.RW1/A consisting of two small paras in the same. In the first para, he has said that the petitioner was not employee of the college as there is no record pertaining to her employment. In the second para, he had said that reply filed by his predecessor- Dr. Ranjan Malhotra may be read as a part and parcel of this affidavit. It may be stated at the very beginning that the reply of the third person can not become evidence of this witness. The reply is not supported by affidavit, and secondly, whatever has been said by Dr. Ranjan Malhotra in the reply, could have been proved by him alone, in case, he had stepped in the witness box. The affidavit is absolutely silent regarding the fact that the petitioner was a workman of one contractor Shri Pappu Saini, an outsource contractor. Otherwise also, when there are no pleadings to this effect in the reply evidence could not have been led on those aspects. The respondent could have examined Shri Papu Saini in the witness box to depose about these facts. In case, Shri Pappu Saini was doing cleaning and sweeping work in the college on outsource basis for long time, some documentation must have been taken place between the respondent college and him. No such document has been filed and placed on the record to apprise this court of actual state of affairs. Payments made to Sh. Pappu Saini might have also been documented, but again no document to support such fact has been brought on the record. When the respondent has not led any evidence despite of the fact that it claims that the cleaning and sweeping work of the college was being done by contractor Pappu Saini, and he was paid for the same by the college, an adverse inference has to be drawn against the respondent to the effect that neither the work of sweeping and cleaning of the college was got done

through Shri Pappu Saini nor there was any truth in this plea. Had any such practice been followed, documents regarding such outsourcing contract or the payments made to him should have been placed on the record for the appreciation by this court.

16. When the respondent has made no efforts to prove the stand taken by for the first time while evidence was being led, there is no reason to disbelieve the petitioner, Shri Naresh Kumar (PW1) and Shri Umesh Kumar (PW2) who are very material witnesses and prove on the record that the petitioner had been working with the respondent as sweeper and she was subjected to unfair labour practices by neither maintaining any records nor issuing any identity card, pay slip etc. in her favour. It is further held that the petitioner is proved to have worked in continuity as a sweeper in the college till the date of her termination and the respondent has intentionally not prepared and produced the records before the court. It is also proved that the petitioner has worked for more than 240 days before her termination, and therefore, violation of Section 25-F of the Act is fully established.

17. Not only violation of Section 25-F of the Act is established, the violation of Section 25-G fully is also established from the statement of Shri Umesh Kumar (PW2) as he has produced the records of the Karamchari Sangh and stated on oath that Sh. Sanjay was enrolled in the union of the college on 21.7.2014, Hari Ram on 21.7.2014 and Narinder Kumar on 10.12.2015. These three persons, are therefore, juniors to the petitioner. The services of the petitioner are proved to have been disengaged without firstly disengaging these juniors. The respondent although pleaded vaguely that these persons were regular employees of the college but no record pertaining to them was brought to the knowledge of the court. It is not clear as to how and when they were recruited and whether they were regular or temporary employees of the college. These three persons are junior to the petitioner and retaining juniors and disengaging senior is clear cut violation of Section 25-G of the Act and the petitioner has been successful in making out the case in her favour. The petitioner, therefore, has succeeded in proving that her services were terminated without following the process of law on 8.7.2015. The claim petition is also held, therefore, maintainable and petitioner is no manner estopped from filing the present claim petition as this claim has been filed in support of the reference. The petitioner has approached the court with clean hands. It is rather the respondent who has withheld material facts from this court so that truth may not come forward. Issue no.1 is held in favour of the petitioner and issues no.3, 4, 5 and 6 are against the respondent.

ISSUE No. 2:

18. In view of my above discussions on issue no.1, the petitioner is held entitled for reinstatement with seniority and continuity in service. Since the petitioner has not led any cogent and convincing evidence that she remained out of work during this period therefore she is not entitled for the back wages. This is held in affirmative.

RELIEF

19. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of her illegal termination except back wages. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 112/2017

Date of Institution : 21-6-2017

Date of Decision : 15-12-2022

Smt. Suresh Kumari w/o Shri Om Veer, r/o House No.334/4, Near Dental College, Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Principal, Himachal Dental College, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of the services of Smt. Suresh Kumari w/o Shri Om Veer, r/o House No.334/4, Near Dental College, Sunder Nagar, District Mandi, H.P. w.e.f. 08-07-2015 (as alleged by the workman) by the Principal, Himachal Pradesh Dental College, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that she was engaged as sweeper by the respondent on 4th April, 2009 and she had been discharged her duties honestly and with dedication. There were no complaints regarding her work and she was member of employees union of the respondent college and paid the contribution in the same and she use to participate in

the proceedings of the Union. She was paid Rs. 3300/- per month initially and later on it was increased to Rs. 4000/- w.e.f. 1.11.2014. She was misguided by the management that her EPF was also being deducted by the management as per rules but no EPF receipt number was ever supplied to her. She was paid less than minimum wages prescribed by the Government and she, therefore, requested the respondent time and again to enhance the wages but she was put off on one or other pretext. Three more sweepers namely Shri Hari Ram, Sanju and Narender were also engaged by the respondent and their salaries were also paid as per the standards. The petitioner requested the respondent time and again to pay the minimum wages but nothing was done hence, a joint memorandum was made to Labour Commissioner, Shimla, Labour Officer, Mandi and Labour Inspector Sunder Nagar on 22.6.2015 and the respondent adopted vindictive attitude and orally terminated the service of the petitioner w.e.f. 8.7.2015 without serving her any notice, or paying any compensation and retaining the juniors. Thus not only the principle of 'first come last go' was violated but other principles of labour law were violated. The petitioner raised the demand with Conciliation Officer Sunder Nagar but amicable settlement could not be had, and therefore, the reference was made by the appropriate Government to this court for adjudication. The petitioner had also approached the authorities under Minimum Wages Act but nothing has been done till date. On such averments, the petitioner has prayed for the relief of her reinstatement with all consequential benefits.

3. The respondent has resisted and contested the petition and taken up preliminary objections of maintainability, cause of action and estoppel. On merits, the respondent has denied the case of the petitioner as incorrect. Some of the allegations have been denied for want of knowledge. Three persons named by the petitioner in para no. 6 of the claim are said to have been engaged on regular basis and there is no parity between them and the petitioner. In nutshell, the respondent has pleaded that neither the petitioner was engaged on daily wages nor she had worked in continuity and nor she was employee of the respondent at any point of time. It is submitted that petition be dismissed.

4. The petitioner has filed rejoinder in which the averments made in the petition are reaffirmed and those made in the reply are denied. It is submitted that several witnesses have appeared before Labour-cum-Conciliation Officer for an inquiry and it was spoken by them that the petitioner was a workman of the respondent.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.07.2015 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner is estopped to file present claim petition as alleged? . . .*OPR.*
5. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
6. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*

Relief

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Yes
Issue No.2	: Affirmative
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Petition is partly allowed per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1, 3, 4, 5, 6:

8. All these issues are taken up together for a sake of evidence and moreover they can be disposed of by single findings for sake of the repetition of evidence.

9. Before the facts of the case and the evidence led by the parties in this case are subjected to close scrutiny and appreciation, it needs to be highlighted that the Industrial Disputes Act is a beneficial piece of legislation having come into the existence to protect the illiterate/semi illiterate labour class who are often subjected to unfair labour practices by the resourceful employers. The purpose of the aforesaid Act is to further ensure that such workmen are not subjected to any type of exploitation by their employers and their rights are properly protected under the law. A complete mechanism has been developed under the Act and the court has to interpret the facts, evidence and other material in a liberal manner so as to serve the cause of justice. Being a beneficial piece of legislation all the presumptions are drawn in favour of the workmen and no presumption can be drawn in favour of the respondent.

10. By and large no labourer lays a fictitious claim of his employment/engagement by any employer as it is difficult to prove the allegations which are false on the face of it. After all, employers against whom false allegations are levelled are always at liberty to lead evidence to prove the claims of the workman as false. There is always some casual connection between the employer and the workmen even in those cases where false claims are made by the workmen. In those cases, also it is for the court to disengage the truth from the falsehood from the material placed before it. In the case in hand, the petitioner has alleged that she was engaged as sweeper w.e.f. 04.4.2009 by the respondent and she was initially paid Rs.3300/- later on Rs.4000/- from 1.11.2014. The respondent, on the other hand, has specifically denied the alleged employment of the respondent. As per the respondent, the petitioner had nothing to do with the respondent college and there was no record regarding her employment with its office. When the petitioner has leveled serious allegations of having worked for years together as a sweeper with the respondent, the respondent could not have taken the allegations so lightly as no person will level allegations to such an extent. The respondent was duty bound to investigate into the matter at its own level and thereafter file a detailed reply in order to bring on the record the motive on the part of the petitioner to lay such a false claim. Not even the single fact has been mentioned in the reply by the

respondent which would hint a particular motive on the part of the petitioner to lay such a claim. After all, something must have taken place, which the respondent was duty bound to bring before the court in the shape of the contents of the reply so filed. Since nothing has been said by the respondent, therefore, the conduct of the respondent in simply denying the allegations without any explanation is not acceptable and does not appear to be bonafide. Something is being withheld from this court which this court has to investigate from the material on the record before reaching to any conclusion.

11. It goes without saying that the petitioner has to stand on his own legs and cannot stand on the weakness of the respondent. Being a beneficial piece of legislation, the onus lies upon the petitioner to prove her case to the extent of prima-facie level alone and not more than that. The petitioner need not to prove her case beyond the standard of every reasonable doubt. She is not even supposed to prove her case to the level of preponderance of the probabilities. The onus immediately shifts upon the respondent as soon as the petitioner succeeds in placing some material to show prima-facie that she had been in the employment of the respondent for long and had worked as sweeper. It is thereafter for the respondent to discharge the onus by bringing every fact that falsifies the case of the petitioner.

12. The petitioner has led evidence on the record which consists of statement of Shri Naresh Kumar, the Labour Inspector Sunder Nagar. He is a very material witness for the purpose of this case. He has stated on oath that an application dated 26.6.2015 (Ext.PW1/A) was received from the petitioner and others complaining that minimum wages were not being paid to them by the respondent. He has tendered the application on the record as Ext.PW1/A. A careful perusal of this application shows that the petitioner and other have levelled allegations against the respondents to the effect that minimum wages were not being paid to them. This notice of this application was served upon the Medical College and the reply to the same was received by Labour Inspector which is Ext.PW1/B. The respondent replied that since the petitioner was not employee of the college, therefore, there was no need to put in appearance before the Labour Inspector. Such reply was filed before other authorities and the copies of the same are Ext.PW1/B, Ext.PW1/C and Ext.PW1/D. An inquiry was conducted by the Labour Inspector into the allegations and he recorded the statement of Dr. Vikas Jindal in this process, copy whereof has been tendered on the record as Ext.PW1/E. In this statement, a vague reference was made by him to the effect that the petitioner and two other sweepers were working with contractor Shri Papu Saini (Shri Hem Raj Saini). He further stated that he was not aware of the fact that as to whether the work of the mess was given to this contractor on outsource basis or not. Shri Ashok Sharma, the Administrative Officer of the college also appeared before the Labour Inspector. His statement was also recorded and the copy thereof is Ext.PW1/F. He also stated that there was no record regarding the employment of the petitioner and other, with the college. He further stated that, in case, the petitioners were ready to give up their claim, they could be given the work through contract agency. Statement of one Shri Lal Singh Chowkidar of college was also recorded which is Ext.PW1/J. He has also supported the case of the petitioner and others before Labour Inspector. Shri Hem Raj Saini also appeared before the Labour Inspector and he also spoke in favour of the petitioner and others. Shri Umesh Kumar, Laboratory Technician also appeared before the Labour Inspector and his statement is Ext.PW1/J. Since these statements were recorded by Labour Inspector, therefore, this court can put the same to the limited use of corroboration of other material as such statements are not recorded on oath and no opportunity to cross-examine these witnesses was afforded to the adversary party.

13. Shri Umesh Kumar (PW2) is a very material and important witness for the purpose of this case. He has stated on oath that he is working with Dental College as Laboratory Technician since 28.10.1999 and he is also the Ex-president of the recognized Himachal Dental College Karamchari Sangh. He also brought some records of the Sangh and stated that as per his record Smt. Tara Devi had joined the Sangh in Mach, 2008, Smt. Suresh Kumari in April, 2009 and Smt.

Geeta Devi in January, 2013. He stated further that Sanjay Kumar had joined the association in July, 2014, Hari Ram in July, 2014 and Narinder Kumar in December, 2015 as sweepers. He admitted that his statement Ext.PW1/J was recorded by the Labour Inspector as per his version during the inquiry. This witness, therefore, proved to be a very important witness for the purposes of this case and he not only supported his statement made before the Labour Inspector but also acknowledged the same. He also said about the fact that the petitioner and two others were working with the respondent as sweeper and they had joined the Karamchari Sangh long back. He was cross-examined regarding authenticity of the register but he explained everything. He explained that there were around 65 members of this association. In fact, he was not cross-examined on the material aspects. There is no cross-examination upon him to test his veracity about his claim that he was working as Laboratory Technician in the respondent college. This fact is therefore, admitted for want of cross-examination on this aspect. It is, therefore, proved that this witness is a regular employee of the college and therefore, his statement inspires more confidence when he speaks in favour of the petitioner. Since he was regular employee of the college and had been the office bearer of the Karamchari Sangh therefore, it is well understood that he knew each workmen personally as he was working for their welfare. There is no cross-examination upon this witness to suggest any motive on his part to speak in favour of the petitioner. There is no denial of the facts deposed by him. He has categorically stated on oath in his examination-in-chief that the present petitioner was enrolled as a worker of the Dental College with him w.e.f. **4.4.2009**. There is no denial of this fact in the cross-examination. He has categorically stated that he had participated in the Inquiry conducted by the Labour Inspector and made his statement Ext.PW1/J. There is no cross-examination on the contents of Ext.PW1/J. The statement of this witness, is therefore, very-relevant for the purpose of this case and prove that the petitioner had been worked as sweeper with the respondent. The respondent has not pleaded at all that the petitioner was employee of the some contractor and the contractor has worked on outsourced basis with the college. No evidence could have been led on the fact not pleaded in the reply.

14. The petitioner has appeared as PW3 in the witness box and her detailed affidavit is Ext.PW3/A. She has pleaded every fact on oath and when she was subjected to cross-examination she admitted that no appointment letter was issued in her favour. She further admitted that no appointment letter was issued to any other worker. This suggestion goes against the respondent. **A vague attempt was made to cross-examine this witness by suggesting that the respondent had outsourced the work of sweeping and cleaning of the college to Pappu Saini contractor but she denied specifically. There is nothing in the statement of the petitioner which would prove that she was deposing falsely with ulterior motives.** Her case is also fully supported by PW2 Shri Umesh Kumar and his statement has been fully discussed hereinabove. As aforesaid the petitioner was supposed to lead evidence to the prima-facie level. The petitioner has led sufficient evidence and proved by preponderant of probability she had been working with the respondent on daily wages since long and her services were terminated without following the process of law. She has also proved that she was being subjected to unfair labour practices by not taking her signatures in lie of the payment of the salary.

14. The onus had now shifted upon the respondent to prove that the petitioner had no connection whatsoever with the college and her case was utterly false. One Dr. Baljeet Singh (RW1) has sworn his affidavit Ext.RW1/A consisting of two small paras in the same. In the first para, he has said that the petitioner was not employee of the college as there is no record pertaining to her employment. In the second para, he had said that reply filed by his predecessor— Dr. Ranjan Malhotra may be read as a part and parcel of this affidavit. It may be stated at the very beginning that the reply of the third person can not become evidence of this witness. The reply is not supported by affidavit, and secondly, whatever has been said by Dr. Ranjan Malhotra in the reply, could have been proved by him alone, in case, he had stepped in the witness box. The affidavit is absolutely silent regarding the fact that the petitioner was a workman of one contractor Shri Pappu

Saini, an outsource contractor. Otherwise also, when there are no pleadings to this effect in the reply evidence could not have been led on those aspects. The respondent could have examined Shri Papu Saini in the witness box to depose about these facts. In case, Shri Pappu Saini was doing cleaning and sweeping work in the college on outsource basis for long time, some documentation must have been taken place between the respondent college and him. No such document has been filed and placed on the record to apprise this court of actual state of affairs. Payments made to Sh. Pappu Saini might have also been documented, but again no document to support such fact has been brought on the record. When the respondent has not led any evidence despite of the fact that it claims that the cleaning and sweeping work of the college was being done by contractor Pappu Saini, and he was paid for the same by the college, an adverse inference has to be drawn against the respondent to the effect that neither the work of sweeping and cleaning of the college was got done through Shri Pappu Saini nor there was any truth in this plea. Had any such practice been followed, documents regarding such outsourcing contract or the payments made to him should have been placed on the record for the appreciation by this court.

15. When the respondent has made no efforts to prove the stand taken by for the first time while evidence was being led, there is no reason to disbelieve the petitioner, Shri Naresh Kumar (PW1) and Shri Umesh Kumar (PW2) who are very material witnesses and prove on the record that the petitioner had been working with the respondent as sweeper and she was subjected to unfair labour practices by neither maintaining any records nor issuing any identity card, pay slip etc. in her favour. It is further held that the petitioner is proved to have worked in continuity as a sweeper in the college till the date of her termination and the respondent has intentionally not prepared and produced the records before the court. It is also proved that the petitioner has worked for more than 240 days before her termination, and therefore, violation of Section 25-F of the Act is fully established.

16. Not only violation of Section 25-F of the Act is established, the violation of Section 25-G fully is also established from the statement of Shri Umesh Kumar (PW2) as he has produced the records of the Karamchari Sangh and stated on oath that Sh. Sanjay was enrolled in the union of the college on 21.7.2014, Hari Ram on 21.7.2014 and Narinder Kumar on 10.12.2015. These three persons, are therefore, juniors to the petitioner. The services of the petitioner are proved to have been disengaged without firstly disengaging these juniors. The respondent although pleaded vaguely that these persons were regular employees of the college but no record pertaining to them was brought to the knowledge of the court. It is not clear as to how and when they were recruited and whether they were regular or temporary employees of the college. These three persons are junior to the petitioner and retaining juniors and disengaging senior is clear cut violation of Section 25-G of the Act and the petitioner has been successful in making out the case in her favour. The petitioner, therefore, has succeeded in proving that her services were terminated without following the process of law on 8.7.2015. The claim petition is also held, therefore, maintainable and petitioner is no manner estopped from filing the present claim petition as this claim has been filed in support of the reference. The petitioner has approached the court with clean hands. It is rather the respondent who has withheld material facts from this court so that truth may not come forward. Issue no.1 is held in favour of the petitioner and issues no.3, 4, 5 and 6 are against the respondent.

ISSUE No. 2:

17. In view of my above discussions on issue no.1, the petitioner is held entitled for reinstatement with seniority and continuity in service. Since the petitioner has not led any cogent and convincing evidence that she remained out of work during this period therefore she is not entitled for the back wages. This is held in affirmative.

RELIEF:

18. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of her illegal termination except back wages. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 110/2017

Date of Institution : 21-6-2017

Date of Decision : 15-12-2022

Smt. Tara Devi w/o Shri Prem Lal, r/o House No. 219/7, Village Banaik, P.O. Bhojpur,
Tehsil Sunder Nagar, District Mandi, H.P. . . . *Petitioner.*

Versus

The Principal, Himachal Dental College, Sunder Nagar, District Mandi, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether termination of the services of Smt. Tara Devi w/o Shri Prem Lal, r/o House No. 219/7, Village Banaik, P.O. Bhojpur, Tehsil Sunder Nagar, District Mandi, H.P. w.e.f.

08.7.2015 (as alleged by the workman) by the Principal, Himachal Dental College, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is that she was engaged as sweeper by the respondent on 2nd March, 2008 and she had been discharged her duties honestly and with dedication. There were no complaints regarding her work and she was member of employees union of the respondent college and paid the contribution in the same and she use to participate in the proceedings of the Union. She was paid Rs. 3300/- per month initially and later on it was increased to Rs. 4000/- w.e.f. 1.11.2014. She was misguided by the management that her EPF was also being deducted by the management as per rules but no EPF receipt number was ever supplied to her. She was paid less than minimum wages prescribed by the Government and she, therefore, requested the respondent time and again to enhance the wages but she was put off or one or other pretext. Three more sweepers namely Shri Hari Ram, Sanju and Narender were also engaged by the respondent and their salaries were also paid as per the standards. The petitioner requested the respondent time and again to pay the minimum wages but nothing was done hence, a joint memorandum was made to Labour Commissioner, Shimla, Labour Officer, Mandi and Labour Inspector Sunder Nagar on 22.6.2015 and the respondent adopted vindictive attitude and orally terminated the service of the petitioner w.e.f. 8.7.2015 without serving her any notice, or paying any compensation and retaining the juniors. Thus not only the principle of 'first come last go' was violated but other principles of labour law were violated. The petitioner raised the demand with Conciliation Officer Sunder Nagar but amicable settlement could not be had, and therefore, the reference was made by the appropriate Government to this court for adjudication. The petitioner had also approached the authorities under Minimum Wages Act but nothing has been done till date. On such averments, the petitioner has prayed for the relief of her reinstatement with all consequential benefits.

3. The respondent has resisted and contested the petition and taken up preliminary objections of maintainability, cause of action and estoppel. On merits, the respondent has denied the case of the petitioner as incorrect. Some of the allegations have been denied for want of knowledge. Three persons named by the petitioner in para no. 6 of the claim are said to have been engaged on regular basis and there is no parity between them and the petitioner. In nutshell, the respondent has pleaded that neither the petitioner was engaged on daily wages nor she had worked in continuity and nor she was employee of the respondent at any point of time. It is submitted that petition be dismissed.

4. The petitioner has filed rejoinder in which the averments made in the petition are reaffirmed and those made in the reply are denied. It is submitted that several witnesses have appeared before Labour-cum-Conciliation Officer for an inquiry and it was spoken by them that the petitioner was a workman of the respondent.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 29.5.2018:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.07.2015 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

4. Whether the petitioner is estopped to file present claim petition as alleged? . . . *OPR.*
5. Whether the petitioner has not approached the Court with clean hands as alleged? . . . *OPR.*
6. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . . *OPR.*
- Relief.
6. I have heard learned counsel for the parties at length and considered the material on record.
7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Yes
Issue No. 2	: Affirmative
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Relief.	: Petition is partly allowed per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1, 3, 4, 5, 6:

8. All these issues are taken up together for a sake of evidence and moreover they can be disposed of by single findings for sake of the repetition of evidence.

9. Before the facts of the case and the evidence led by the parties in this case are subjected to close scrutiny and appreciation, it needs to be highlighted that the Industrial Disputes Act is a beneficial piece of legislation having come into the existence to protect the illiterate/semi illiterate labour class who are often subjected to unfair labour practices by the resourceful employers. The purpose of the aforesaid Act is to further ensure that such workmen are not subjected to any type of exploitation by their employers and their rights are properly protected under the law. A complete mechanism has been developed under the Act and the court has to interpret the facts, evidence and other material in a liberal manner so as to serve the cause of justice. Being a beneficial piece of legislation all the presumptions are drawn in favour of the workmen and no presumption can be drawn in favour of the respondent.

10. By and large no labourer lays a fictitious claim of his employment/engagement by any employer as it is difficult to prove the allegations which are false on the face of it. After all, employers against whom false allegations are levelled are always at liberty to lead evidence to prove the claims of the workman as false. There is always some casual connection between the employer and the workmen even in those cases where false claims are made by the workmen. In those cases, also it is for the court to disengage the truth from the falsehood from the material placed before it. In the case in hand, the petitioner has alleged that she was engaged as sweeper

w.e.f. 02.3.2008 by the respondent and she was initially paid Rs. 3300/- later on Rs. 4000/- from 1.11.2014. The respondent, on the other hand, has specifically denied the alleged employment of the respondent. As per the respondent, the petitioner had nothing to do with the respondent college and there was no record regarding her employment with its office. When the petitioner has leveled serious allegations of having worked for years together as a sweeper with the respondent, the respondent could not have taken the allegations so lightly as no person will level allegations to such an extent. The respondent was duty bound to investigate into the matter at its own level and thereafter file a detailed reply in order to bring on the record the motive on the part of the petitioner to lay such a false claim. Not even the single fact has been mentioned in the reply by the respondent which would hint a particular motive on the part of the petitioner to lay such a claim. After all, something must have taken place, which the respondent was duty bound to bring before the court in the shape of the contents of the reply so filed. Since nothing has been said by the respondent, therefore, the conduct of the respondent in simply denying the allegations without any explanation is not acceptable and does not appear to be bonafide. Something is being withheld from this court which this court has to investigate from the material on the record before reaching to any conclusion.

11. It goes without saying that the petitioner has to stand on his own legs and cannot stand on the weakness of the respondent. Being a beneficial piece of legislation, the onus lies upon the petitioner to prove her case to the extent of prima-facie level alone and not more than that. The petitioner need not to prove her case beyond the standard of every reasonable doubt. She is not even supposed to prove her case to the level of preponderance of the probabilities. The onus immediately shifts upon the respondent as soon as the petitioner succeeds in placing some material to show prima-facie that she had been in the employment of the respondent for long and had worked as sweeper. It is thereafter for the respondent to discharge the onus by bringing every fact that falsifies the case of the petitioner.

12. The petitioner has led evidence on the record which consists of statement of Shri Naresh Kumar, the Labour Inspector Sunder Nagar. He is a very material witness for the purpose of this case. He has stated on oath that an application dated 26.6.2015 (Ext.PW1/A) was received from the petitioner and others complaining that minimum wages were not being paid to them by the respondent. He has tendered the application on the record as Ext.PW1/A. A careful perusal of this application shows that the petitioner and other have levelled allegations against the respondents to the effect that minimum wages were not being paid to them. This notice of this application was served upon the Medical College and the reply to the same was received by Labour Inspector which is Ext.PW1/B. The respondent replied that since the petitioner was not employee of the college, therefore, there was no need to put in appearance before the Labour Inspector. Such reply was filed before other authorities and the copies of the same are Ext.PW1/B, Ext.PW1/C and Ext.PW1/D. An inquiry was conducted by the Labour Inspector into the allegations and he recorded the statement of Dr. Vikas Jindal in this process, copy whereof has been tendered on the record as Ext.PW1/E. In this statement, a vague reference was made by him to the effect that the petitioner and two other sweepers were working with contractor Shri Papu Saini (Shri Hem Raj Saini). He further stated that he was not aware of the fact that as to whether the work of the mess was given to this contractor on outsource basis or not. Shri Ashok Sharma, the Administrative Officer of the college also appeared before the Labour Inspector. His statement was also recorded and the copy thereof is Ext.PW1/F. He also stated that there was no record regarding the employment of the petitioner and other, with the college. He further stated that, in case, the petitioners were ready to give up their claim, they could be given the work through contract agency. Statement of one Shri Lal Singh Chowkidar of college was also recorded which is Ext.PW1/J. He has also supported the case of the petitioner and others before Labour Inspector. Shri Hem Raj Saini also appeared before the Labour Inspector and he also spoke in favour of the petitioner and others. Shri Umesh Kumar, Laboratory Technician also appeared before the Labour Inspector and his statement is Ext.PW1/J. Since these

statements were recorded by Labour Inspector, therefore, this court can put the same to the limited use of corroboration of other material as such statements are not recorded on oath and no opportunity to cross-examine these witnesses was afforded to the adversary party.

13. Shri Umesh Kumar (PW2) is a very material and important witness for the purpose of this case. He has stated on oath that he is working with Dental College as Laboratory Technician since 28.10.1999 and he is also the Ex-president of the recognized Himachal Dental College Karamchari Sangh. He also brought some records of the Sangh and stated that as per his record Smt. Tara Devi had joined the Sangh in Mach, 2008, Smt. Suresh Kumari in April, 2009 and Smt. Geeta Devi in January, 2013. He stated further that Sanjay Kumar had joined the association in July, 2014, Hari Ram in July, 2014 and Narinder Kumar in December, 2015 as sweepers. He admitted that his statement Ext.PW1/J was recorded by the Labour Inspector as per his version during the inquiry. This witness, therefore, proved to be a very important witness for the purposes of this case and he not only supported his statement made before the Labour Inspector but also acknowledged the same. He also said about the fact that the petitioner and two others were working with the respondent as sweeper and they had joined the Karamchari Sangh long back. He was cross-examined regarding authenticity of the register but he explained everything. He explained that there were around 65 members of this association. In fact, he was not cross-examined on the material aspects. There is no cross-examination upon him to test his veracity about his claim that he was working as Laboratory Technician in the respondent college. This fact is therefore, admitted for want of cross-examination on this aspect. It is, therefore, proved that this witness is a regular employee of the college and therefore, his statement inspires more confidence when he speaks in favour of the petitioner. Since he was regular employee of the college and had been the office bearer of the Karamchari Sangh therefore, it is well understood that he knew each workmen personally as he was working for their welfare. There is no cross-examination upon this witness to suggest any motive on his part to speak in favour of the petitioner. There is no denial of the facts deposed by him. He has categorically stated on oath in his examination-in-chief that the present petitioner was enrolled as a worker of the Dental College with him w.e.f. 2.3.2008. There is no denial of this fact in the cross-examination. He has categorically stated that he had participated in the Inquiry conducted by the Labour Inspector and made his statement Ext.PW1/J. There is no cross-examination on the contents of Ext.PW1/J. The statement of this witness, is therefore, very-very relevant for the purpose of this case and prove that the petitioner had been worked as sweeper with the respondent. The respondent has not pleaded at all that the petitioner was employee of the some contractor and the contractor has worked on outsourced basis with the college. No evidence could have been led on the fact not pleaded in the reply.

14. The petitioner has appeared as PW3 in the witness box and her detailed affidavit is Ext.PW3/A. She has pleaded every fact on oath and when she was subjected to cross-examination she admitted that no appointment letter was issued in her favour. She further admitted that no appointment letter was issued to any other worker. This suggestion goes against the respondent. A vague attempt was made to cross-examine this witness by suggesting that the respondent had outsourced the work of sweeping and cleaning of the college to Pappu Saini contractor but she denied specifically. There is nothing in the statement of the petitioner which would prove that she was deposing falsely with ulterior motives. Her case is also fully supported by PW2 Shri Umesh Kumar and his statement has been fully discussed hereinabove. As aforesaid the petitioner was supposed to lead evidence to the prima-facie level. The petitioner has led sufficient evidence and proved by preponderant of probability she had been working with the respondent on daily wages since long and her services were terminated without following the process of law. She has also proved that she was being subjected to unfair labour practices by not taking her signatures in lie of the payment of the salary.

15. The onus had now shifted upon the respondent to prove that the petitioner had no connection whatsoever with the college and her case was utterly false. One Dr. Baljeet Singh (RW1) has sworn his affidavit Ext.RW1/A consisting of two small paras in the same. In the first para, he has said that the petitioner was not employee of the college as there is no record pertaining to her employment. In the second para, he had said that reply filed by his predecessor— Dr. Ranjan Malhotra may be read as a part and parcel of this affidavit. It may be stated at the very beginning that the reply of the third person can not become evidence of this witness. The reply is not supported by affidavit, and secondly, whatever has been said by Dr. Ranjan Malhotra in the reply, could have been proved by him alone, in case, he had stepped in the witness box. The affidavit is absolutely silent regarding the fact that the petitioner was a workman of one contractor Shri Pappu Saini, an outsource contractor. Otherwise also, when there are no pleadings to this effect in the reply evidence could not have been led on those aspects. The respondent could have examined Shri Papu Saini in the witness box to depose about these facts. In case, Shri Pappu Saini was doing cleaning and sweeping work in the college on outsource basis for long time, some documentation must have been taken place between the respondent college and him. No such document has been filed and placed on the record to apprise this court of actual state of affairs. Payments made to Sh. Pappu Saini might have also been documented, but again no document to support such fact has been brought on the record. When the respondent has not led any evidence despite of the fact that it claims that the cleaning and sweeping work of the college was being done by contractor Pappu Saini, and he was paid for the same by the college, an adverse inference has to be drawn against the respondent to the effect that neither the work of sweeping and cleaning of the college was got done through Shri Pappu Saini nor there was any truth in this plea. Had any such practice been followed, documents regarding such outsourcing contract or the payments made to him should have been placed on the record for the appreciation by this court.

16. When the respondent has made no efforts to prove the stand taken by for the first time while evidence was being led, there is no reason to disbelieve the petitioner, Shri Naresh Kumar (PW1) and Shri Umesh Kumar (PW2) who are very material witnesses and prove on the record that the petitioner had been working with the respondent as sweeper and she was subjected to unfair labour practices by neither maintaining any records nor issuing any identity card, pay slip etc. in her favour. It is further held that the petitioner is proved to have worked in continuity as a sweeper in the college till the date of her termination and the respondent has intentionally not prepared and produced the records before the court. It is also proved that the petitioner has worked for more than 240 days before her termination, and therefore, violation of Section 25-F of the Act is fully established.

17. Not only violation of Section 25-F of the Act is established, the violation of Section 25-G fully is also established from the statement of Shri Umesh Kumar (PW2) as he has produced the records of the Karamchari Sangh and stated on oath that Sh. Sanjay was enrolled in the union of the college on 21.7.2014, Hari Ram on 21.7.2014 and Narinder Kumar on 10.12.2015. These three persons, are therefore, juniors to the petitioner. The services of the petitioner are proved to have been disengaged without firstly disengaging these juniors. The respondent although pleaded vaguely that these persons were regular employees of the college but no record pertaining to them was brought to the knowledge of the court. It is not clear as to how and when they were recruited and whether they were regular or temporary employees of the college. These three persons are junior to the petitioner and retaining juniors and disengaging senior is clear cut violation of Section 25-G of the Act and the petitioner has been successful in making out the case in her favour. The petitioner, therefore, has succeeded in proving that her services were terminated without following the process of law on 8.7.2015. The claim petition is also held, therefore, maintainable and petitioner is no manner estopped from filing the present claim petition as this claim has been filed in support of the reference. The petitioner has approached the court with clean hands. It is rather the

respondent who has withheld material facts from this court so that truth may not come forward. Issue no.1 is held in favour of the petitioner and issues no.3, 4, 5 and 6 are against the respondent.

ISSUE No. 2:

18. In view of my above discussions on issue no.1, the petitioner is held entitled for reinstatement with seniority and continuity in service. Since the petitioner has not led any cogent and convincing evidence that she remained out of work during this period therefore she is not entitled for the back wages. This is held in affirmative.

RELIEF

19. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of her illegal termination except back wages. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 462/2016

Date of Institution : 20-8-2016

Date of Decision : 15-12-2022

Shri Kishan Lal s/o Shri Dutt Ram, r/o Village Khagrao, P.O. Jaidevi, Tehsil Sunder Nagar,
District Mandi, H.P. . .Petitioner.

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Sunder Nagar, District
Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of the services of Shri Kishan Lal s/o Shri Dutt Ram, r/o Village Khagrao, P.O. Jaidevi, Tehsil Sunder Nagar, District Mandi, H.P. during November, 2000 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. , without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute vide demand notice dated 23-02-2013 after lapse of more than 12 years. If not, keeping in view delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that respondent department is a public utility service department and has employed hundreds of workmen. The department is supposed to maintain a seniority list and issue casual cards to its workmen so as to follow the principle of 'first come last go'. The petitioner was engaged as beldar in the year 1983 and he worked till 31.12.2000 and his services were terminated without following the process of law despite of the fact that he was performing his duties with dedication. He was given artificial breaks with a view to prevent him from completing 240 working days whereas junior namely S/Sh. Khem Raj, Daulat Ram, Govind Ram, Jai Ram, Inder, Jiwan and Lal Singh etc. were retained after termination of his services. The services of the junior workmen are also said to have been regularized. It is alleged that he respondent has issued incorrect mandays chart and engaged fresh workmen without giving the petitioner the priority. The demand was raised by the petitioner in and in this manner reference has been received. It is submitted that the services of the petitioner were to be ordered to be re-engaged with all the benefits.

3. The respondent has resisted and contested the claim on the plea of maintainability, cause of action, estoppel etc. On merits, the respondent has pleaded that the petitioner was engaged as beldar w.e.f. 27.2.1985 to 11.9.1995 and during the aforesaid period he worked with breaks as he was in the habit of absenting himself. In the year 1995 he filed Original Application No.711/1995 before the Administrative Tribunal for his re-engagement and consequent upon the said order his services were re-engaged and he worked w.e.f. 11.9.1995 for 104 days and he worked from 10.10.1996 to 26.11.2000 with breaks but never completed 240 days in any of the calendar year. It is submitted that since the petitioner was a casual labourer there was no requirement of notice he remained sleeping over his claim for more than one and half decade and petition liable failed on this ground as dispute faded away with the passage of time. Other allegations have been denied.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 18.7.2018:—

1. Whether the termination of the service of the petitioner by the respondent during Nov., 2000 is/was legal and justified as alleged? . . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? . . .*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? . . .*OPR*.
6. Whether the claim petition is time barred as alleged? . . .*OPR*.
7. Whether the petitioner has not come to the court with clean hand as alleged? . . .*OPR*.
8. Whether the petitioner has suppressed true material facts from the Court as alleged? . . .*OPR*.
9. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR*.

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Issue No.8 : No

Issue No.9 : No

Relief : Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 9:

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been tendered as Ext.RW1/A. A careful perusal of the same shows that the petitioner has worked for 20 days in 2001 and 28 days in 2000.

The petitioner has not brought on record any material to show that the number of days shown in this mandays chart is incorrect and he has worked for more number of days. In this situation the petitioner has not worked for minimum 240 days in a period of 12 calendar months preceding his termination and therefore there is no violation of Section 25-F of the Act. No further discussion is required on this aspect.

10. The petitioner has alleged violation of Sections 25-G and 25-H of the Act. As per the petitioner several juniors were retained while terminating his services and all those juniors were regularized with the passage of time. The respondent, on the other hand, has claimed that the petitioner had left the work at his own and his services were never terminated. The respondent has thus taken up the plea of abandonment of work by the petitioner but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called for any point of time and no responsible officer made his observations on any document prepared at that time to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment. It means that the services of the petitioner were terminated by the respondent.

11. The petitioner has named several workmen as his juniors. Such fact has been pleaded by him in para no.3 of the claim. The respondent on the other hand has denied the allegations as incorrect. The petitioner has sworn his affidavit Ext.PW1/A in which he has again highlighted the fact that workmen junior to him were retained and fresh hands were also engaged after his termination. He was subjected to cross-examination but nothing was put to him regarding the retention of juniors and engagement of fresh hands as alleged by him. His statement therefore, went unrebutted and unchallenged on this aspect. Engineer Shri Rajesh Kumar (RW1) appeared in the witness box to speak in favour of the respondent and tendered the mandays chart Ext.RW1/A and details of the work done by the petitioner as Ext.RW1/B. He further stated that petitioner had worked since the year 1985 but with lots of break and was re-engaged as per the orders of Hon'ble Administrative Tribunal. He tried to make out a case that no fresh hand was engaged and no junior to the petitioner was retained. While this witness was subjected to cross-examination he could not stand by the test. He stated that no seniority list of the workmen was produced on record. He pleaded his ignorance to the suggestion that lots of daily wage workmen were engaged w.e.f 1985 to 2001. He further pleaded his ignorance to the suggestion as to whether the seniority list was prepared by the department or not. He feigned ignorance as to how many workmen were regularized in between 1985 to 2001. When the responsible officer of the department has pleaded ignorance to each and every suggestion regarding the issue of retention of juniors and engagement of fresh hands, an adverse inference is liable to be taken against the respondent. The respondent should have placed all the material facts on the record. There was no question of pleading ignorance to each and every suggestion, as has been done by him. It is therefore, but natural that this witness intends to conceal those facts which go in favour of the petitioner. The petitioner had prayed during the proceedings to ask the respondent to produce the seniority list but no such seniority list was produced. On 27.6.2018 one Shri Chandermani Sharma, the then Assistant Engineer appeared before the court and submitted on oath that seniority list was prepared with respect to regular employees and services of daily wagers were taken through muster roll only. This statement is very strange and shows that the respondent intends to conceal all the material information from the court. When the respondent was engaged workman on muster roll basis, it was mandatory to prepare a seniority list of such workmen so the principle of labour law could be followed while terminating their services and while re-engaging them as the principles of 'first come last go' could not be followed unless there was a seniority list. The regularization of workman is also done after going through the seniority list as well as the muster roll as the senior has to be preferred over the junior workmen. It therefore, can not be believed that no seniority list was maintained with respect to the petitioner and other workers who were working on muster roll

basis. It appears that the seniority list has intentionally been withheld from the court so that court could not come to know about the truth. When the petitioner has specifically alleged that lots of workmen were engaged during the period he has worked in between 1985 to 2001, the plea of ignorance by a responsible officer will not be sufficient to disbelieve the petitioner. The petitioner has specifically said that new workmen were engaged after his termination in the year 2001. The responsible officer of the department has again pleaded his ignorance. Since it is a beneficial piece of legislation therefore, every presumption has to be drawn in favour of the petitioner. By not producing the seniority list of the daily wage workers on the record, the respondent has withheld material document from the court and strengthened the plea of the petitioner to the effect that there was several workmen junior to him and all these workmen were retained whereas, his services were terminated. Failure of the respondent to produce the seniority list also prove that new hands were engaged after the year 2001 and petitioner was not given priority. Thus the statement of the petitioner made on oath can not be disbelieved as he was not the custodian of the records and the records should have been placed before the court by the respondent department, in whose custody the same existed. Thus violation of Sections 25-G and 25-H of the Act is established in this case.

12 The reference specifically seeks adjudication of the impact of the delay caused by the petitioner in approaching the authorities by way of his grievances. As per the language of the reference this court is suppose to adjudicate the impact of delay of twelve years as the demand was raised after a long time. In case, the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2001 is considered even then the petitioner kept mum for more than 12 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹50,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is maintainable as it has been filed in support of the reference received from the appropriate Government and it is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action, locus standi in his favour to file the present case. No estoppel lies against the petitioner. In view of the aforesaid discussion, all these issues are decided accordingly.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 12 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 465/2016

Date of Institution : 20-8-2016

Date of Decision : 15-12-2022

Shri Devender Kumar s/o Shri Mani Ram, r/o Village Nalu, P.O.Jaidevi, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of the services of Shri Devender Kumar s/o Shri Mani Ram, r/o Village Nalu, P.O. Jaidevi, Tehsil Sunder Nagar, District Mandi, H.P. w.e.f. 01-12-1998 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute vide demand notice dated 25-03-2013 after lapse of more than 14 years. If not, keeping in view delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that respondent department is a public utility service department and has employed hundreds of workmen. The department is

supposed to maintain a seniority list and issue casual cards to its workmen so as to follow the principle of 'first come last go'. The petitioner was engaged as beldar in the year 1990 and he worked till 31.12.2000 and his services were terminated without following the process of law despite of the fact that he was performing his duties with dedication. He was given artificial breaks with a view to prevent him from completing 240 working days whereas junior namely S/Sh. Khem Raj, Daulat Ram, Govind Ram, Jai Ram, Inder, Jiwan and Lal Singh etc. were retained after termination of his services. The services of the junior workmen are also said to have been regularized. It is alleged that the respondent has issued incorrect mandays chart and engaged fresh workmen without giving the petitioner the priority. The demand was raised by the petitioner and when the conciliation proceedings failed, the reference was made to this court. It is submitted that the services of the petitioner be reinstated with all the benefits.

3. The respondent has resisted and contested the claim on the plea of maintainability, cause of action, estoppel etc. On merits, the respondent has pleaded that the petitioner was engaged as beldar w.e.f. 08.10.1990 to 31.07.1995 and during the aforesaid period he worked with breaks as he was in the habit of absenting himself. In the year 1995 he filed Original Application No.706/1995 before the Administrative Tribunal for his re-engagement and consequent upon the said order his services were re-engaged and he worked w.e.f. 11.9.1995 to 24.5.1996 for 181 days and he worked from 26.6.1996 to 26.11.2000 with breaks but never completed 240 days in any of the calendar year. It is submitted that since the petitioner was a casual labourer there was no requirement of notice he remained sleeping over his claim for more than one and half decade and petition liable failed on this ground as dispute faded away with the passage of time. Other allegations have denied.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 18.7.2018:—

1. Whether the termination of the service of the petitioner by the respondent w.e.f. 01-12-1998 is/was legal and justified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the petitioner has no cause of action to file present case as alleged? . . .*OPR.*
5. Whether the petitioner has no locus standi to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is time barred as alleged? . . .*OPR.*
7. Whether the petitioner has not come to the court with clean hand as alleged? . . .*OPR.*
8. Whether the petitioner has suppressed true material facts from the Court as alleged? . . .*OPR.*
9. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Issue No. 5	: No
Issue No. 6	: No
Issue No.7	: No
Issue No.8	: No
Issue No.9	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per

REASONS FOR FINDINGS

ISSUES No.1 to 9:

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been tendered as Ext.RW1/A. A careful perusal of the same shows that the petitioner has worked for 37 days in 2002 and 44 days in 2000 and as such the petitioner had not worked for single day in the year 2001. The petitioner has not brought on record any material to show that the number of days shown in this mandays chart are incorrect and he has worked for more number of days. In this situation the petitioner has not worked for minimum 240 days in a period of 12 calendar months preceding his termination and therefore there is no violation of Section 25-F of the Act. No further discussion is required on this aspect.

10. The petitioner has alleged violation of Sections 25-G and 25-H of the Act. As per the petitioner several juniors were retained while terminating his services and all those juniors were regularized with the passage of time. The respondent, on the other hand, has claimed that the petitioner had left the work at his own and his services were never terminated. The respondent has thus taken up the plea of abandonment of work by the petitioner but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called for any point of time and no responsible officer made his observations on any document prepared at that time to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his duties and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment. It means that the services of the petitioner were terminated by the respondent.

11. The petitioner has named several workmen as his juniors. Such fact has been pleaded by him in para no.3 of the claim. The respondent, on the other hand, has denied the allegations as

incorrect. The petitioner has sworn his affidavit Ext.PW1/A in which he has again highlighted the fact that workmen junior to him were retained and fresh hands were also engaged after his termination. He was subjected to cross-examination but nothing was put to him regarding the retention of juniors and engagement of fresh hands as alleged by him. His statement therefore, went unrebutted and unchallenged on this aspect. Engineer Shri Rajesh Kumar (RW1) appeared in the witness box to speak in favour of the respondent and tendered the mandays chart Ext.RW1/A and details of the work done by the petitioner as Ext.RW1/B. He further stated that petitioner had worked since the year 1990 but with lots of break and was re-engaged as per the orders of Hon'ble Administrative Tribunal. He tried to make out a case that no fresh hand was engaged and no junior to the petitioner was retained. While this witness was subjected to cross-examination he could not with stand by the test. He stated that no seniority list of the workmen was produced on record. He pleaded his ignorance to the suggestion that lots of daily wage workmen were engaged w.e.f 1990 to 2002. He further pleaded his ignorance to the suggestion as to whether the seniority list was prepared by the department or not. He feigned ignorance as to how many workmen were regularized in between 1990 to 2002. When the responsible officer of the department has pleaded ignorance to each and every suggestion on the issue of retention of juniors and engagement of fresh hands, an adverse inference is liable to be taken against the respondent. The respondent should have placed all the material facts on the record. There was no question of pleading ignorance to each and every suggestion, as has been done by him. It is therefore, but natural that this witness intends to conceal those facts which go in favour of the petitioner. The petitioner had prayed during the proceedings to ask the respondent to produce the seniority list but no such seniority list was produced. On 27.6.2018 one Shri Chandermani Sharma, the then Assistant Engineer appeared before the court and submitted on oath that seniority list was prepared with respect to regular employees and services of daily wagers were taken through muster roll only. This statement is very strange and shows that the respondent intends to conceal all the material information from the court. When the respondent and others were engaged as workmen on muster roll basis, it was mandatory to prepare a seniority list of such workmen so the principle of labour law could be followed while terminating their services and while re-engaging them as the principles of 'first come last go' could not be followed unless there was a seniority list. The regularization of workman is also done after going through the seniority list as well as the muster roll as the seniors have to be preferred over the junior workmen. It therefore, can not be believed that no seniority list was maintained with respect to the petitioner and other workers who were working on muster roll basis. It appears that the seniority list has intentionally been withheld from the court so that court could not come to know about the truth. When the petitioner has specifically alleged that lots of workmen were engaged during the period he has worked in between 1990 to 2002, the plea of ignorance by a responsible officer will not be sufficient to disbelieve the petitioner. The petitioner has specifically said that new workmen were engaged after his termination in the year 2002. The responsible officer of the department has again pleaded his ignorance. Since it is a beneficial piece of legislation therefore, every presumption has to be drawn in favour of the petitioner. By not producing the seniority list of the daily wage workers on the record, the respondent has withheld material document from the court and strengthened the plea of the petitioner to the effect that there was several workmen junior to him and all these workmen were retained whereas, his services were terminated. Failure of the respondent to produce the seniority list also prove that new hands were engaged after the year 2002 and petitioner was not given priority. Thus the statement of the petitioner made on oath can not be disbelieved as he was not the custodian of the records and the records should have been placed before the court by the respondent department, in whose custody the same existed. Thus violation of Sections 25-G and 25-H of the Act is established in this case.

12. The reference specifically seeks adjudication of the impact of the delay caused by the petitioner in approaching the authorities by way of his grievances. As per the language of the reference this court is suppose to adjudicate the impact of delay of fourteen years as the demand

was raised after a long time. In case, the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2002 is considered even then the petitioner kept mum for more than fourteen years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹50,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is maintainable as it has been filed in support of the reference received from the appropriate Government and it is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action, locus standi in his favour to file the present case. No estoppel lies against the petitioner. In view of the aforesaid discussion, all these issues are decided accordingly.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 14 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 463/2016

Date of Institution : 20-8-2016

Date of Decision : 15-12-2022

Shri Bali Bahadur s/o Late Shri Het Ram, r/o Village Kathla, P.O. Maloh, Tehsil Sunder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B.L. Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. R.S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of the services of Shri Bali Bahadur s/o Late Shri Het Ram, r/o Village Kathla, P.O. Maloh, Tehsil Sunder Nagar, District Mandi, H.P. w.e.f. 01-11-1996 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited Sunder Nagar, District Mandi, H.P. , without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas he has raised the industrial dispute vide demand notice dated 25-03-2013 after lapse of more than 16 years. If not, keeping in view delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner as made out from the claim is that respondent department is a public utility service department and has employed hundreds of workmen. The department is supposed to maintain a seniority list and issue casual cards to its workmen so as to follow the principle of 'first come last go'. The petitioner was engaged as beldar in the year 1983 and he worked till 31.12.2000 and his services were terminated without following the process of law despite of the fact that he was performing his duties with dedication. He was given artificial breaks with a view to prevent him from completing 240 working days whereas junior namely S/Sh. Khem Raj, Daulat Ram, Govind Ram, Jai Ram, Inder, Jiwan and Lal Singh etc. were retained after termination of his services. The services of the junior workmen are also said to have been regularized. It is alleged that the respondent has issued incorrect mandays chart and engaged fresh workmen without giving the petitioner the priority. The demand was raised by the petitioner and when the conciliation proceedings failed, the reference was made to this court. It is submitted that the services of the petitioner be reinstated with all the benefits.

3. The respondent has resisted and contested the claim on the plea of maintainability, cause of action, estoppel etc. On merits, the respondent has pleaded that the petitioner was engaged as beldar w.e.f. 26.10.1984 to 30.11.1989 and during the aforesaid period he worked with breaks as he was in the habit of absenting himself. In the year 1995 he filed Original Application No.709/1995 before the Administrative Tribunal for his re-engagement and consequent upon the said order his services were re-engaged and he worked w.e.f. 11.9.1995 to 24.11.1995 for 73 days and he worked from 26.11.1995 to 26.11.2000 with breaks but never completed 240 days in any of the calendar year. It is submitted that since the petitioner was a casual labourer there was no

requirement of notice he remained sleeping over his claim for more than one and half decade and petition liable failed on this ground as dispute faded away with the passage of time. Other allegations have denied.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 18.7.2018:—

1. Whether the termination of the service of the petitioner by the respondent w.e.f. 01-11-1996 is/was legal and justified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? . . .*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? . . .*OPR*.
6. Whether the claim petition is time barred as alleged? . . .*OPR*.
7. Whether the petitioner has not come to the court with clean hand as alleged? . . .*OPR*.
8. Whether the petitioner has suppressed true material facts from the Court as alleged? . . .*OPR*.
9. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .*OPR*.

Relief

6. I have heard learned counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Issue No.7	: No
Issue No.8	: No
Issue No.9	: No

Relief

: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 9

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been tendered as Ext.RW1/A. A careful perusal of the same shows that the petitioner has worked for 14 days in 2000 and 13 days in 1996 and as such the petitioner had not worked for single day in the years 1997, 1998 and 1999. The petitioner has not brought on record any material to show that the number of days shown in this mandays chart are incorrect and he has worked for more number of days. In this situation the petitioner has not worked for minimum 240 days in a period of 12 calendar months preceding his termination and therefore there is no violation of Section 25-F of the Act. No further discussion is required on this aspect.

10. The petitioner has alleged violation of Sections 25-G and 25-H of the Act. As per the petitioner several juniors were retained while terminating his services and all those juniors were regularized with the passage of time. The respondent, on the other hand, has claimed that the petitioner had left the work at his own and his services were never terminated. The respondent has thus taken up the plea of abandonment of work by the petitioner but has failed to prove the same for the simple reason that no notice was ever issued to the petitioner asking him to join his duties. No explanation of the petitioner was called for any point of time and no responsible officer made his observations on any document prepared at that time to the effect that the petitioner was given ample opportunity to report to his work and still he did not join his duties and thus he had abandoned the work. When there is no evidence on the plea of abandonment, the respondent can not succeed in the plea of abandonment. It means that the services of the petitioner were terminated by the respondent.

11. The petitioner has named several workmen as his juniors. Such fact has been pleaded by him in para no.3 of the claim. The respondent, on the other hand, has denied the allegations as incorrect. The petitioner has sworn his affidavit Ext.PW1/A in which he has again highlighted the fact that workmen junior to him were retained and fresh hands were also engaged after his termination. He was subjected to cross-examination but nothing was put to him regarding the retention of juniors and engagement of fresh hands as alleged by him. His statement therefore, went unrebutted and unchallenged on this aspect. Engineer Shri Rajesh Kumar (RW1) appeared in the witness box to speak in favour of the respondent and tendered the mandays chart Ext.RW1/A and details of the work done by the petitioner as Ext.RW1/B. He further stated that petitioner had worked since the year 1984 but with lots of break and was re-engaged as per the orders of Hon'ble Administrative Tribunal. He tried to make out a case that no fresh hand was engaged and no junior to the petitioner was retained. While this witness was subjected to cross-examination he could not stand by the test. He stated that no seniority list of the workmen was produced on record. He pleaded his ignorance to the suggestion that lots of daily wage workmen were engaged w.e.f 1984 to 2000. He further pleaded his ignorance to the suggestion as to whether the seniority list was prepared by the department or not. He feigned ignorance as to how many workmen were regularized in between 1984 to 2000. When the responsible officer of the department has pleaded ignorance to each and every suggestion on the issue of retention of juniors and engagement of fresh hands, an adverse inference is liable to be taken against the respondent. The respondent should have placed all the material facts on the record. There was no question of pleading ignorance to

each and every suggestion, as has been done by him. It is therefore, but natural that this witness intends to conceal those facts which go in favour of the petitioner. The petitioner had prayed during the proceedings to ask the respondent to produce the seniority list but no such seniority list was produced. On 27.6.2018 one Shri Chandermani Sharma, the then Assistant Engineer appeared before the court and submitted on oath that seniority list was prepared with respect to regular employees and services of daily wagers were taken through muster roll only. This statement is very strange and shows that the respondent intends to conceal all the material information from the court. When the respondent and others were engaged as workmen on muster roll basis, it was mandatory to prepare a seniority list of such workmen so the principle of labour law could be followed while terminating their services and while re-engaging them as the principles of 'first come last go' could not be followed unless there was a seniority list. The regularization of workman is also done after going through the seniority list as well as the muster roll as the seniors have to be preferred over the junior workmen. It therefore, can not be believed that no seniority list was maintained with respect to the petitioner and other workers who were working on muster roll basis. It appears that the seniority list has intentionally been withheld from the court so that court could not come to know about the truth. When the petitioner has specifically alleged that lots of workmen were engaged during the period he has worked in between 1984 to 2000, the plea of ignorance by a responsible officer will not be sufficient to disbelieve the petitioner. The petitioner has specifically said that new workmen were engaged after his termination in the year 2000. The responsible officer of the department has again pleaded his ignorance. Since it is a beneficial piece of legislation therefore, every presumptions has to be drawn in favour of the petitioner. By not producing the seniority list of the daily wage workers on the record, the respondent has withheld material document from the court and strengthened the plea of the petitioner to the effect that there was several workmen junior to him and all these workmen were retained whereas, his services were terminated. Failure of the respondent to produce the seniority list also prove that new hands were engaged after the year 2000 and petitioner was not given priority. Thus the statement of the petitioner made on oath can not be disbelieved as he was not the custodian of the records and the records should have been placed before the court by the respondent department, in whose custody the same existed. Thus violation of Sections 25-G and 25-H of the Act is established in this case.

12. The reference specifically seeks adjudication of the impact of the delay caused by the petitioner in approaching the authorities by way of his grievances. As per the language of the reference this court is suppose to adjudicate the impact of delay of sixteen years as the demand was raised after a long time. In case, the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2000 is considered even then the petitioner kept mum for more than fourteen years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹50,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is maintainable as it has been filed in support of the reference received from the appropriate Government and it is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. There is nothing on the record to prove that the petitioner has approached the court not with clean hands. Nothing has been concealed from this court and the petitioner has the cause of action, locus standi in his favour to file the present case. No estoppel lies against the petitioner. In view of the aforesaid discussion, all these issues are decided accordingly.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than sixteen years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 609/2016
Date of Institution : 26-8-2016
Date of Decision : 15-12-2022

Shri Bihari Lal s/o Shri Chand Ram, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat,
District Mandi, H.P. *Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla
2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Deepak Azad, Ld. Adv.
For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of services of Sh. Bihari Lal S/o Sh. Chand Ram, Vill. Chah, PO Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. during 2/1999 by the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 12/1998 to 2/1999, only for 82 days, and has raised his industrial dispute vide demand notice dated Nil (received in the Office of the Labour Officer Mandi on 11/3/2015) after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The petitioner has come up with the case that he had worked in the year 1998-1999 as daily waged beldar with the respondent and when he had completed 82 days of work he was retrenched from services without any justification or serving any notice despite of the fact that work was very much available. The workmen junior to the petitioner were retained and violation of Section 25-G also took place. As per him, his younger brother and his wife died in the years 2007 and 2010 respectively after suffering tuberculosis and he remained busy with his household affairs and could not raise the dispute at earliest. The petitioner has submitted that one Shri Nihal Chand was also similarly situated and he was also granted compensation to the tune of Rs.50,000/- and his case be treated in the same manner.

3. The respondents has resisted and contested the claim and submitted that the petitioner has worked only in January and February, 1999 for 53 days only whereafter he left the job at his sweet will. It is submitted that he did not complete 240 working days in any calendar year hence provisions of Section 25-F of the Act had no application, and moreover, he left the job at his own therefore, no violation took place at the hand of the respondent. No junior is said to have been retained and respondent has prayed for dismissal of the claim.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is further stressed by him that the junior workmen to him have been regularized, whereas, his services were terminated.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 19.9.2018:—

1. Whether termination of the service of petitioner by the respondent during February, 1999 is/was legal and justified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition suffers from delay and laches as alleged? . . .*OPR.*

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondents at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No. 2	: Decided accordingly
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4:

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been tendered on record as Ext.PW1/B. There is no dispute regarding this document. It is clear from the perusal of the same that the petitioner has worked for total 53 days in January and February 1999. He is said to have left the work thereafter. Engineer, Sh. Narender Kumar Verma has deposed this fact in his affidavit Ext.RW1/A. The petitioner has disputed the number of working days in his affidavit Ext.PW1/A by pleading that he has worked for 191 days before his termination. Whether the petitioner has worked for 53 days and for 191 days, the requirement to invoke violation of Section 25-F of the Act is not fulfilled. The petitioner is supposed to work for minimum 240 days in twelve calendar month preceding his termination. No document has been placed on the record by the petitioner to prove that he has worked for 191 days before his alleged termination. It is not clear as to how the petitioner came to the conclusion that he has worked for as many as 191 days. Neither any document prepared by him to count his working days nor any witness has been examined to this effect. It is therefore, proved that the petitioner had worked only for 53 days as is evident from the mandays chart Ext.PW1/B and the compliance of Section 25-F was not required at all. There is no violation of Section 25-F of the Act.

10. The petitioner has said vaguely that the workmen junior to him were retained and regularized. He has neither any such workman in the pleadings nor he has proved any such fact in evidence. No witness has come forward to depose on oath that a particular workman was junior to the petitioner and now his services stands regularized. No question was put to Engineer Narender Kumar Verma regarding any workman junior to the petitioner having been regularized with the passage of time. Since the petitioner claims that there were workmen junior to him, he should have at least whispered their name before the court so that the onus could be shifted upon the respondent to produce the records before the court. The petitioner has been very casual in this case and has not placed any material to substantiate his plea to support the violation of Section 25-G of the Act, hence, he has failed to prove his case. It is therefore, not established that the workmen junior to the petitioner were retained and regularized and violation of Section 25-G of the Act took place. Simple allegations are not sufficient unless prima-facie material is brought on the record to substantiate the plea, which has not been done by the petitioner in this case.

11. There are neither pleadings nor any evidence on the record to prove that any fresh hand was engaged by the respondent after the termination of the services of the petitioner. In the aforesaid facts and circumstances, it is also not material whether the petitioner has left the work at his own and his services were terminated. Otherwise also, the plea of abandonment is not

established by the respondent as no notice or any other document has been produced on the record ever addressed to the petitioner asking him to come forth and resume his duties. The statement of petitioner is deficient in establishing the allegations and it is not established that the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Act. Claim petition is however, maintainable as it has been filed in support of the reference. The petition is not vitiated on account of delay and laches in this case as law is settled to the effect that there is no limitation to approach the authorities by the workman. It is further settled that the court has to mold the relief in case the delay is substantial to approaching the authority in this case. Since violation of Sections 25-F, 25-G or 25-H of the Act is not established this issue regarding delay and laches remains merely academic. The petitioner is held not entitled any relief. Issues no.1 and 2 held against the petitioner and issues no.3 and 4 are held against the respondent.

RELIEF

12. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 467/2016

Date of Institution : 20-08-2016

Date of Decision : 15-12-2022

Shri Bhag Singh s/o Shri Goverdhan Ram, r/o Village Banehach, P.O. Balag, Tehsil Sunder
Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Suket, Sunder Nagar, District Mandi,
H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rajat Chaudhary, Ld. Adv. (Vice)

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of services of Shri Bhag Singh s/o Shri Goverdhan Ram, r/o Village Banehach, Post Office Balag, Tehsil Sunder Nagar, District Mandi, H.P. during December, 2002 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 8 years vide demand notice dated 07.09.2011, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as made out from the claim is that he was engaged on daily wages as beldar w.e.f. 21.11.1998 and he worked till 30.11.2012 in continuity but his services were terminated on the excuse that there was scarcity of funds and he shall be called as and when funds were available. Thereafter petitioner approached the respondent time and again in the years 2003, 2004, 2005 and raised demand in the year 2006, 2007 and 2008-2009. He raised fresh demand in the year 2011 but of no avail. The respondent did not prepare the seniority list and workmen junior to him shown in para no.4 of the claim were retained and regularized. Even fresh hands were also engaged without giving him priority, and therefore, the respondent not only violated the provisions contained in Section 25-F but also violated the provisions contained in Sections 25-G and 25-H of the Act. On such averments, the petitioner has prayed for his re-engagement with all the consequential benefits.

3. The respondent has resisted and contested the claim and pleaded that the petitioner was engaged as daily wager in November 1998 and he worked till November 2002 intermittently. He left the work thereafter at his sweet will and had never completed minimum 240 days. No request was made by him in between 2003 to 2009 for the re-engagement. The demand was raised for the first time in the year 2011 after long delay. Only those workmen were regularized who had fulfilled the terms and conditions for regularization as per the policies and neither any junior to the petitioner was retained nor fresh hands was engaged after he left the work. The respondent claimed that neither violation of any provisions of the Act has taken place nor the petitioner was entitled for any relief as he has raised the issue after a considerable delay. It is prayed that the petition be dismissed.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply with the emphasis on the point that his name was never included in the seniority list and violation of various provisions of law took place at the hand of the respondent.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 01.8.2018:-

1. Whether termination of service of the petitioner by respondent during December, 2002 is/was legal and justified as alleged? . . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches, as alleged? If so, its effect? . . .*OPR*.

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: Yes
Relief	: Petition is partly allowed awarding lump sum compensation of ₹75,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has tendered his affidavit Ext.PW1/A on the record apart from placing on record the seniority list as it stood on 31.3.2003, as Ext.PW1/B. He has tendered one mandays chart of Shri Yashwant Singh as Mark-A. The respondent has also placed mandays chart of the petitioner on the record as Ext.RW1/B. This mandays chart is thus not in dispute and it can safely be looked into by this court. The petitioner had initially joined on 21.11.1998 and worked till 30.11.2002. He has worked for 283 days in the year 1999 and for 79 days in 2000, 22 days in 2001 and for 96 days in 2002. As per the mandays chart Ext.RW1/B, the petitioner has worked for 96 days in the year 2002 and 22 days in the year 2001. In case the working days for the years 2001 and 2002 combined together, the total comes out 118 days. The petitioner has thus worked for 118 days in a span of two years. It is thus but natural that he has not worked for minimum 240 days in a period of 12 calendar months preceding his termination. It may be stated here that the court can not travel beyond the scope of reference and the reference received by this court for adjudication does not require adjudication on time to time termination and its impact on the case of the petitioner. Thus the court can not examine this aspect of the matter to find out whether time to time termination was result of unfair labour practices or not. The net result of the above discussion is that the petitioner has failed to prove that he had worked for minimum 240 days in 12 calendar months preceding his termination. The violation of Section 25-F is, therefore, not made out.

10. The respondent has placed on record the mandays chart Ext.RW1/B in which the petitioner is said to have been engaged for the first time in the year 1998 and he has worked till the

year 2002. It is not the case of the respondent that the petitioner was engaged in the year 2001 or 2002. The respondent does not dispute the date of initial engagement of the petitioner and rather admits the same. Thus the court has to act on the admission of the respondent. It is therefore, proved that the petitioner was engaged in the year 1998 and he had worked till last day of November 2002. The seniority list placed on the record by the petitioner Ext. PW1/B shows that large numbers of workmen have been engaged in the years, 1999, 2000 and 2001. Since the respondent has not come up with the case that on account of absence of the petitioner from his work he was re-engaged and the previous seniority was lost, the court can not take the date of engagement of the petitioner from last break in the services as the respondent has placed on record the mandays chart w.e.f. 21.11.1998 showing intermittent work. The respondent itself has admitted that the petitioner had been working w.e.f. 21.11.1998. Since large number of workmen have been engaged in the years 1999, 2000 and 2001, therefore, all these workmen are to be treated juniors to the petitioner as his services were engaged in the year 1998. In case the petitioner had himself left the work, the respondent was not relieved up the duty to have issued a notice to the petitioner asking him to join the work immediately failing which his services shall be treated as having been abandoned. Nothing was done by the respondent and when the petitioner joined, he was permitted to work and the intermittent work was done by the petitioner w.e.f 1998 to 2001. The respondent thus has come up with the plea that the petitioner has himself remained absent in between but no material has been placed on the record suggesting that any action was taken against the petitioner for his absence. There is no material on the record to show that he was warned of consequences of such absence and cautioned to remain regular in future. Thus the presumption goes that the work was always available with the respondent but the services of the petitioner were terminated from time to time by the respondent by exercising unfair labour practices. Once it has been held that the petitioner was engaged w.e.f. 21.11.1998 and after this date large number of workmen were engaged, those workmen are juniors to the petitioner. Therefore, when the petitioner had absented himself in between or when he had absented forever after 30.11.2002, the respondent should have called him back, and in case, he was not coming back some proceedings should have been recorded in writing as a proof of the abandonment. Since nothing has been done by the respondent, and since the juniors were retained, therefore the presumption goes that the juniors were retained at the cost of the petitioner and there is violation of Section 25-G of the Act.

11. It is clear from the seniority list Ext.PW1/A that the workmen were further engaged after 30.11.2002 and they have been regularized with the passage of time. In case the petitioner has himself left the work it was the duty of the respondent to call him and give him priority for his re-engagement over the fresh hands. Since no material has been placed on record to show that the petitioner was recalled and when he did not join the work, the presumption of abandonment was raised, therefore, it is held that the respondent has violated the provisions contained in Section 25-H of the Act. The petitioner has been consistent while appearing as PW1 in the witness box. He has stated that he was always willing to work but his services were terminated in between. Shri Subhash Chand Prasher, Divisional Forest Officer (RW1) in his affidavit Ext.RW1/A has although taken up the plea of abandonment yet in his cross-examination, he has admitted that no letter was issued to the petitioner asking him to return. He has admitted that no explanation was called and no inquiry took place. He has shown another seniority list Ext. PA as it stood on 31.3.2004 and has admitted that the workmen shown from serial no.92 to 113 were engaged after March, 2003. Thus it is a clear cut case of violation of Section 25-H of the Act as well.

12. The reference specifically requires an adjudication on the aspect of delay in approaching the court. As per the language of the reference this court is suppose to adjudicate the impact of delay of nine years as the demand was raised for the first time in the year 2011. In case, The petitioner kept mum for more than nine years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive

workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. All these issues are decided accordingly. Claim petition is however maintainable as it has been filed in support of the reference. Issues no.1 and 2 are decided accordingly and issue no.3 is held against respondent and issue no.4 in negative.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than nine years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 329/2016
Date of Institution : 26-05-2016
Date of Decision : 15-12-2022

Shri Tara Chand s/o Shri Gokal Ram, Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Suket, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.
 For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of services of Shri Tara Chand s/o Shri Gokal Ram, r/o Village Parsh, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. during August, 2009 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., who has worked as beldar on daily wages basis only for 25, 23, 80, 30 and 28 days during the years 2002, 2003, 2004, 2005 and 2009 respectively and has raised his industrial dispute demand notice dated 21-07-2014 after delay of more than 4 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 4 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as made out from the claim is that his services were engaged as daily wage beldar by the respondent in the year 1998 and he worked without any interruption till the year 2002 when his services were terminated by retaining his juniors. The seniority list was though prepared but his name was not mentioned anywhere. The petitioner visited the respondent time and again but no work was given to him. At later point of time when he came to know that workmen junior to him namely S/Shri Het Ram, Asha Ram, Dalip Kumar etc. were re-engaged and regularized then he raised the demand by way of demand notice. In this manner that reference was made by the appropriate government for adjudication to this court. On the aforesaid averments, the petitioner has prayed for his reinstatement with all the benefits.

3. The respondent has resisted and contested the claim and submitted that the petitioner has worked from January 2002 till 2009 but intermittently and his services were never terminated. The petitioner left the work at his own sweet will and he had never completed 240 days in any of the calendar year, hence, neither violation of Section 25-F took place nor his services were terminated at any point of time. The respondent denied that any junior was retained. It is explained that only those workmen were regularized who had worked in continuity and their cases were covered under the regularization policy of the Government.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He maintained that although the work was available with the respondent yet his services were terminated time to time so that he could not avail the benefit of labour laws.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 10.7.2019:—

1. Whether the termination of the services of the petitioner by the respondent during August, 2009 is/was illegal and unjustified? . . .*OPP.*
2. If issue No.1 is proved in the affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches, as alleged? . . . *OPR.*

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is **partly allowed** awarding lump sum compensation of
₹75,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4:

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The mandays chart of the petitioner has been placed on the record Ext.RW1/B. A careful perusal of this document shows that petitioner was engaged in January 2002 and he had worked till the year 2009 in intervals. His working days have been shown as 25, 23, 80, 30 and 28 days during the years 2002, 2003, 2004, 2005 and 2009. The petitioner has also not disputed this document. He has also not led any evidence on the record to prove that this mandays chart is incorrect. In case, it is presumed for a while that the services of the petitioner were terminated in August, 2009, still he has not proved to have worked for minimum 240 days in preceding 12 calendar months before his termination as he had worked for 30 days in the year 2005 and has not worked even for a single day in the years 2006, 2007 and 2008. The petitioner has come up with the plea that his services were terminated time and again. The petitioner has not raised the issue of time to time termination before the conciliation officer and no reference has been received by the court on the question of time to time termination of the petitioner. Therefore, this court can not examine the question as to whether the petitioner was subjected to time to time break and whether such time to time breaks were liable to be condoned or not. Therefore, the petitioner has failed to prove that he has worked for 240 days work in preceding 12 calendar months before his termination. The violation of Section 25-F of the Act is thus not established in this case.

10. The petitioner has further alleged the violation of Section 25-G of the Act. According to him several workmen junior to him having been engaged after the year 2002 were retained at the time of his termination, and therefore, violation of Section 25-G took place in the present case. On the other hand, the respondent has come up with the plea that the petitioner has himself left the work at his own sweet will and his services were never terminated. A careful perusal of the mandays chart shows that the petitioner has worked for 25, 23, 80, 30 day w.e.f. 2002 to 2005 and he remained absent in the years 2006, 2007 and 2008. He again joined the work in the year 2009 and worked for 28 days. The respondent has not come up with the plea that the petitioner was

engaged in the year 2009 as a fresh hand, and therefore, his seniority was to be counted from 2009 onward and the previous seniority, if any, had come to an end on account of break of three years. The respondent has rather pleaded that the petitioner was engaged in the year 2002 and he worked till the year 2009 intermittently. By taking such a plea, the respondent does not dispute the continuity of the services of the petitioner. Had the respondent taken up the plea that the petitioner was engaged as fresh hand in the year 2009, position would have been different and it could have been said that the work, if any, done by him in the past can not be taken into account to adjudge his seniority. When the case of the respondent is throughout to the effect that the petitioner was engaged for the first time in the year 2002 and he had worked till the year 2009 with breaks then it is clear that the respondent pleads his date of engagement as January, 2002 and not the year 2009 when he had rejoined after a gap of three years. In such a situation, the seniority of the petitioner has treated from the year 2002 onward in order to decide whether the violation of section 25-G of the Act took place or not. The petitioner has sworn his affidavit Ext.PW1/A in which he has stated that workmen junior to him were not terminated and his services were terminated time and again and finally in the year 2009 he was thrown out of work. The respondent, on the other hand, has come up with the plea that petitioner has left the work at his sweet will and his services were never terminated. It is settled law that the plea of abandonment is plea of the fact and the entire onus upon the respondent to establish the same. It was for the respondent to have proved the plea of abandonment by leading cogent evidence which has not been done in this case. The petitioner has tendered his affidavit Ext.PW1/A and withstood the test of the cross-examination. Once the plea of abandonment fails, the court has to presume the fact that the services of the petitioner were terminated by the respondent.

11. The petitioner has placed on record copy of seniority list Ext.PW1/D as on 31.3.2014. It is clear from this document that after the year 2002 several persons were engaged in between till the year 2009. All these workmen are therefore, junior to the petitioner. In case, the petitioner was himself absenting from work, the respondent was duty bound to call him back and, in case, the petitioner had not reported to the work, the respondent would have made observations in the shape of some document to the effect that petitioner has abandoned the work and any such document could have been placed on the record. Since the petitioner was not recalled, therefore, there is violation of Section 25-G of the Act as well, as the workmen junior to the petitioner were still working. Workmen are mostly from the labour class and poor families least conversant of their legal rights and there is a positive duty on the part of the employer to apprise them of their rights before taking any action against them. In this case, when the workmen junior to the petitioner were still working when the petitioner allegedly left the work, it was duty of the respondent to call him back and apprise him of his right of being retained over his juniors during the retrenchment. It was duty of the respondent to inform him that, in case, any retrenchment takes place, the workmen junior to him shall be retrenched first. Since the petitioner was not recalled, therefore, violation of Section 25-H also took place in this case. Since fresh hands were engaged after the petitioner left the work, therefore, violation of Section 25-H of the Act is also established.

12. The reference specifically seek the adjudication on the point of delay in making the claim and the effects thereof. As per the language of the reference this court is suppose to adjudicate the impact of delay of four years as the demand was raised for the first time in the year 2014. There is delay of four years and this delay is fatal for the petitioner that he should have raised the demand immediately or within a reasonable time one or two years. Moreover his conduct is liable to be noticed. He remained out of work in between 2006 to 2008 and did not raise his demand in time. He was, however, taken back to the work by the respondent in the year 2009 and he worked for 28 days. Taking into account the number of the working days of the petitioner and his conduct pointed hereinabove, it is not fit where his services are liable to be re-engaged. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the valuable rights other workmen and in such situation the appropriate relief

available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹75,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. All these issues are decided accordingly.

RELIEF

13. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G of the Act in this case and the petitioner had raised demand after a gap of more than 4 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 835/2016

Date of Institution : 26-11-2016

Date of Decision : 15-12-2022

Shri Khem Singh s/o Shri Dhani Ram, r/o Village and Post Office Balag, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Suket, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Abhishek Lakhanpal, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Khem Singh s/o Shri Dhani Ram, r/o Village and P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P. w.e.f. 20/03/2002 by the Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated nil received in the Office of Labour Office Mandi on 17/12/2014 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 15 and 41 days during years 2000 and 2002 respectively and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as made out from the claim is that his services were engaged on 1.1.1998 as daily wage beldar in Suket Division of the department and he had worked in continuity till 20th March 2002 when his services were terminated without following the procedure. Apart from it, he had worked in April, 2002 to December 2008 but the respondent has intentionally withheld the records on the excuse that the record has been destroyed in fire, hence, such acts amount to unfair labour practice. The petitioner has further claimed that he approached the respondent time and again in between the year 2009 to 2014 but he was not re-engaged, hence, he has to raise the demand. He has named several workmen as juniors to him, who are said to have been retained. Fresh hands were also engaged after his termination. On such averments, the petitioner has submitted that the respondent has violated the provisions of Sections 25-F, 25-G and 25-H of the Act, and therefore, his services be reinstated with all the consequential benefits.

3. The respondent has resisted and contested the claim and contended that the petitioner has worked only for 15 days in the year 2000 and 41 days in the year 2002 on muster roll basis and thereafter left the work at his sweet will. As per the respondent, the petitioner was never engaged on 1.1.1998 and he has also not worked upto December 2008. It is denied that the principle of 'last come first go' was violated. It is equally denied that no fresh hand was engaged after the petitioner left the work. The claim is said to have been filed after a long period and, therefore, the petitioner is not entitled for any relief.

4. No rejoinder was filed. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 22.8.2019:—

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 20-03-2002 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

4. Whether the claim petition is bad on account of delay and laches, as alleged? . . . *OPR*.

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2 : decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Relief. : Petition is **partly allowed** awarding lump sum compensation of ₹50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has examined himself as PW1 and tendered his affidavit Ext.PW1/A. He has placed on record the seniority list of daily wage labourers as on 31.3.2014 as Ext.PW1/B. The petitioner has also tendered copy of letter dated 8th July 2013 of Government of Himachal Pradesh regarding the regularization policy of daily waged workers as Ext.PW1/C. The petitioner has tendered on record two pages of some documents Ext.PW1/D which is not complete in itself, and can not be read in evidence for any purpose purpose. The mandays chart of the petitioner has been tendered on record as Ext.RW1/B showing total number of working days w.e.f. 31.6.2000 to 20.3.2002 as 41+15=56. The seniority list as it stood on 31.3.2003 has been tendered on the record as Ext.RW1/C by the respondent and Ext.RW1/D is one more document that came into existence on 15.9.2003. This is a document recorded at the time of a compromise having taken place in between the workers and the management/officers of the forest department whereby it was decided that seniority list of the workmen shall be prepared shortly, and apart from it, those workmen whose services were terminated shall be taken back in their services.

10. The petitioner has although claimed to have worked w.e.f. 1.1.1998 till 20.3.2002 but no evidence has been led by him to support the plea. No villager, no co-worker and no family of the petitioner has come forth to speak on oath that the petitioner had been working as daily wage beldar with the respondent w.e.f. 1.1.1998 and this fact was within his personal knowledge. Had any of the aforesaid witness been examined, the court would have received an opportunity to appreciate such evidence and test the veracity of such witness. Merely alleging that the petitioner had been working w.e.f. 1.1.1998, no fact shall be proved. On the other hand, the respondent has specifically pleaded and thereafter tendered the mandays chart qua the petitioner on the record to prove that the petitioner was engaged not in the year 1998 but in the year 2000 and he had worked for total 41+15=56 days. There is no reasons to disbelieve this evidence when the petitioner has not led any evidence to prove that he had been working since the year 1998. The petitioner has thus failed to prove that he had been working w.e.f. 1.1.1998. Relying upon the mandays chart tendered on the record it is held that petitioner had worked in the year 2000 only for 15 days and in the year 2002

he has worked for 41 days, total 56 days. In this situation, even if the services of the petitioner have been terminated orally even then the violation of Section 25-F of the Act has not taken place as the petitioner was supposed to work for minimum 240 days in twelve calendar months preceding his termination to attract the provisions of Section 25-F of the Act.

11. The petitioner has alleged that workmen junior to him were retained and his services were terminated and thus violation of Section 25-G of the Act took place. The petitioner has spoken these facts on oath in his affidavit Ext.PW1/A. He has relied upon the seniority list Ext.PW1/D. This seniority list shows that workmen from serial no.70 onward (Sh. Rajinder Kumar etc.) were engaged after August 2000 and the services of the petitioner were terminated on 20th March 2002. Shri Hukkam Chand was engaged in July, 2000 and Shri Nanak Chand was also engaged in July 2000. It is clear from this list that workmen have been engaged after the year 2002. The respondent has come up with the plea that the services of the petitioner were engaged on 21.6.2000 for the first time and he has worked till 20.3.2002 in intervals. The respondent has not come up with the plea that the petitioner was re-engaged in February, 2002 and his previous seniority does not exist at all and the re-engagement was a kind of new employment. It is not the case of the respondent that the services of the petitioner were engaged and re-engaged. Rather the respondent has come up with the plea that the petitioner has worked in intervals. Thus the beginning point of the job of the petitioner as a daily wage shall be treated as 2000 and end point of his employment shall be treated as 2002. It is clear from the seniority list that many workmen were engaged in between by the respondent as is clear from the seniority list Ext.RW1/C. Thus, there is violation of both the Sections 25-G and 25-H of the Act as the petitioner was not given priority in the matter of employment after the year 2002 whenever there was a need of labour and fresh hands were engaged. When fresh hand was engaged after the year 2002, violation of Section 25-H of the Act took place as petitioner was not given priority. It was the duty of the respondent to summon the petitioner first in case the labour was required, and in case, the petitioner refused to work only then fresh hands could be engaged. Since no material has been placed on record by the respondent to prove that petitioner was firstly given the priority therefore, there is violation of Section 25-H of the Act as well and the petitioner is entitled for relief in accordance with law.

12. Shri Subhash Chand Prasher, DFO Suket has appeared as RW1 in the witness box and come up with the plea that petitioner had left the work at his sweet will and his services were never terminated. Once the workmen junior to the petitioner were still working with the respondent, the respondent was duty bound to call the petitioner back in case he had left the work at his own. In case, the petitioner refused to work despite of being called in that event, the respondent could have taken the plea of abandonment of the work. Since the petitioner was not recalled, therefore there is violation of Section 25-G of the Act as well, as the workmen junior to the petitioner were still working. Workmen are mostly from the labour class and poor families least conversant of their legal rights and there is a positive duty on the part of the employer to apprise them of their rights before taking any action against them. In this case, when the workmen junior to the petitioner were still working when the petitioner allegedly left the work, it was duty of the respondent to call him back and apprise him of his right of being retained over his juniors during the retrenchment. It was duty of the respondent to inform him that in case any retrenchment takes place, the workmen junior to him shall be retrenched first. Since the petitioner was not recalled, therefore, violation of Section 25-H also took place in this case. Since fresh hands were engaged after the petitioner left the work, therefore, violation of Section 25-H of the Act is also established. Shri Subhash Chand Prasher (RW1) had admitted the compromise Ext.RW1/D having taken place between the workers and the employer. Despite of this no seniority list was prepared as no such list has been placed on the record showing the placement of the petitioner in the same. Shri Subhash Chand Prasher (RW1) has tried to make out a case that at least 90 days work was required to include the name of any workman in the list. No such rule has been disclosed by him wherein it was necessary for a workman to work at least for minimum period of 90 days before his name could be included in the

seniority list of the workmen. This witness has admitted that Shri Nanak Chand s/o Shri Dai Ram has been shown to have been engaged after termination of the services of the petitioner. Thus this witness has failed to do better and it is proved that there is violation of Sections 25-G and 25-H of the Act.

13. The reference specifically finds mentioned of the delay part. As per the language of the reference this court is suppose to adjudicate the impact of delay of twelve years as the demand was raised for the first time in the year 2014. In case the case of the petitioner to the effect that similar situated persons were re-engaged after the year 2000 is considered even then the petitioner kept mum for more than 12 years and thus slept over his right. It is settled law that a workman who sleeps over his right together for years can not claim reinstatement as such delay affects the other workman and in such situation the appropriate relief available to such inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and amount of ₹50,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. All these issues are decided accordingly.

RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act in this case and the petitioner had raised demand after a gap of more than 12 years and his claim for reinstatement has thus been vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹50,000/- (Rupees fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No.	: 195/2015
Date of Institution	: 04-5-2015
Date of Decision	: 15-12-2022

Shri Sita Ram s/o Shri Sant Ram, r/o Village Nal, P.O. Tanbol, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. . *Petitioner.*

Versus

The Executive Engineer, Bilaspur Division No.II, H.P.P.W.D., Bilaspur, District Bilaspur, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Deepak Azad, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the industrial dispute raised by the worker Shri Sita Ram s/o Shri Sant Ram, r/o Village Nal, P.O. Tanbol, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. before the Executive Engineer, Bilaspur Division No.-II, H.P.P.W.D., Bilaspur, District Bilaspur, H.P. vide demand notice dated 06.09.2013 regarding his alleged illegal termination of service w.e.f. 01.04.1995 suffers from delay and laches? If not, Whether termination of the services of Shri Sita Ram S/O Shri Sant Ram, R/O Village Nal, P.O. Tanbol, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. by the Executive Engineer, Bilaspur Division No.II, H.P.P.W.D. Bilaspur, District Bilaspur, H.P. w.e.f. 01.04.1995 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as made out from his claim petition is that he was engaged as daily waged mason by the respondent w.e.f. 1984 to 1986 and from 1994 to 1995 and his services were terminated orally by assuring him that he will be recalled as and when his services are required and the funds are available. Neither notice under Section 25-F was served upon him nor any retrenchment compensation was paid. The workmen junior to him were retained and his services were terminated by adopting pick and chose method. Feeling aggrieved, he has to raise the demand in which the conciliation proceedings took place and failed, whereafter the present reference was made to the court by the appropriate government for adjudication. On such averments, the petitioner has prayed for the relief of reinstatement and other consequential reliefs.

3. The respondent has resisted and contested the petition and admitted that the petitioner was engaged as a daily wage mason in the year 1984 and he worked till the year 1986. It is explained that he left the work at his own and thereafter worked intermittently in years 1994 and 1995. He has said to have been not completed 240 days in the period of preceding 12 months. It is denied that any junior to him was retained or any fresh hand was engaged. The demand is said to have been raised after 18 years without any explanation and, the claim is said to have been suffering from delay and laches. On such averments, the petitioner is said to be not entitled any relief.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and the language of the reference, following issues were framed for determination on 21.6.2019:—

1. Whether termination of the services of petitioner by the respondent w.e.f. 01-04-1995 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the industrial dispute raised by the petitioner suffers from delay and latches, as alleged? . . .*OPR*.
4. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.

Relief.

6. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

- | | |
|------------|--|
| Issue No.1 | : decided accordingly |
| Issue No.2 | : decided accordingly |
| Issue No.3 | : Yes |
| Issue No.4 | : No |
| Relief. | : Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative portion of the Award. |

REASONS FOR FINDINGS

ISSUES No.1 to 4

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The respondent has placed on record the mandays chart of the petitioner as Ext.RW1/B. A careful examination of this mandays chart show that the petitioner was initially engaged on 1.3.1984 and in the year 1984 he worked for 243 days. In the year 1985 he again worked in continuity and for total 357 days. In the year 1986 he again worked in continuity but till 20.7.1986. Total working days of the petitioner in the year 1986 have been shown as 182. Thereafter the petitioner has been shown as absent and on 12.11.1994 he again resumed the work and again worked for 16 days in the month of November, 1994 and for full 31 days in December 1994. In the year 1994, the petitioner completed work of 47 days. In the year 1995, the petitioner is shown to have worked w.e.f 1.1.1995 to 31.2.1995 for total 84 days. The petitioner has not disputed this document and he has also placed reliance upon the same. In order to attract the violation of provisions of Section 25-F of the Act, it is for the petitioner to prove that he has worked for minimum 240 days in preceding 12 calendar months before his termination. In the case in hand, the petitioner has worked only for five months in continuity before his alleged termination and has thus worked for 47+84=131 days. 131 days are much below to the figure of minimum 240 working days required to attract the violation of section 25F of the Act. Therefore, the provisions contained in

Section 25-F of the Act are not attracted at all and the petitioner has failed to make out the case of violation of Section 25-F of the Act by the respondent.

10. The petitioner has laid his claim on the alleged violation of Section 25-G of the Act. The petitioner has averred in the petition itself that the respondent has adopted pick and chose method and retained his juniors whereas, terminated him time to time and now the juniors have been regularized. The respondent, on the other hand, has simply denied these allegations without placing on record any document from its record to show the actual state of affairs. The petitioner led evidence and examined himself as PW1. He has specifically named one Khajanu Ram s/o Shri Hari Ram and two other persons as juniors to him in this para. He has specifically stated that these workmen are junior to him and are still working and in this manner respondent has violated the principle of 'last come first go'.

11. The petitioner was cross-examined, but there is no searching cross-examination with respect to these three persons named in para no.3 of the affidavit. The respondent led evidence and Engineer Shri Gurminder Singh Rana has appeared as RW1 in the witness box. He has sworn his affidavit without making a detailed reference regarding these three persons named by petitioner in para no.3 of the affidavit. When he was subjected to cross-examination, he made the position further miserable by feigning his ignorance to the suggestion that three workmen mentioned in para no.3 of the affidavit Ext.PW1/A were juniors to the petitioner. Shri Gurminer Singh Rana, a responsible Officer of the respondent department is supposed to have consulted the entire records before making any statement in the court. This Officer, has however, acted in a most casual manner and feigned his ignorance regarding the averments of para no.3 of the affidavit of petitioner. Since the respondent department is a custodian of the record, efforts should have been made by the officers manning the respondent department by going through the record in order to find out as to whether Khajanu Ram s/o Shri Hari Ram and two other persons mentioned by name were junior to the petitioner or not. It was the duty of the department to file on record documents showing the actual state affairs. Since the document are withheld from the court and since responsible officer of the department has feigned ignorance on this aspect, therefore, the court is bound to presumed the facts against the respondent. It has to be kept in mind always that the Industrial Disputes Act is beneficial piece of legislation having come into existence in order to protect the interest of the labour class, and the onus always rests upon the employer to prove the things that go against the litigating workman by leading cogent evidence before the court. Once the petitioner has made a clear cut mention of all the workers in para no.3 of the petition and has spoken about the same in his affidavit, the respondent can not take the risk of not replying these allegations specifically. Had the respondent led cogent and convincing evidence on the record to show that these persons mentioned in para no.3 of the petitioner's affidavit were not junior to him, the position would have been different. Since no material has been placed on the record therefore, this court presumes that these persons were engaged after 12.11.1994 and before 31.3.1995, when the petitioner was working with the respondent. When they are treated as juniors, there is clear cut violation of the provisions contained in Section 25-G of the Act, and the petitioner is entitled for the benefit accruing out of the same.

12. The respondent has although taken up the plea that the petitioner has left the work at his own but no evidence to prove the plea of abandonment has been led the respondent department Engineer Shri Gurminder Singh Rana has stated on oath that neither any notice was given to the petitioner after he had left the work nor any inquiry was conducted. The plea of abandonment is plea of the fact and the entire onus upon the respondent. It was for the respondent to have proved the plea of abandonment by leading cogent evidence which has not been done. The petitioner has tendered his affidavit Ext.PW1/A and withstood the test of the cross-examination. Once the plea of abandonment fails, the court has to presume the fact that the services of the petitioner were terminated by the respondent.

13. The reference specifically seeks an adjudication on the delay occasioned to raise the demand and its impact on the fate of the claim. As per the language of the reference this court is suppose to adjudicate the impact of delay of eighteen years as the demand was raised for the first time in 06.9.2013. The petitioner has not explained the reasons for such delay anywhere. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement as a matter of right irrespective of the fact that the respondent is proved to have caused the violation of sections 25 F, 25G and 25H. Such an unusual delay affects the valuable rights of other workman, who hare working for years together. In such situation, the appropriate relief available to such an inactive workman is to grant the compensation by molding the relief. In the case in hand also, taking into account the delay in approaching the court and other factors, the petitioner is held entitled for compensation instead of re-engagement and other consequential benefits, and an amount of ₹50,000/- is awarded as lump sum compensation in lieu of his reinstatement and other service benefits which shall be paid to the petitioner. The petition is not barred by limitation as no such limitation has been prescribed in the statute which would make the claim time barred. The court has to see the impact of the delay at the time of granting the relief. The petition is held as maintainable. Issues no.1 to 4 are decided accordingly.

RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G of the Act in this case yet the petitioner had raised demand after a gap of more than 18 years and his claim for reinstatement has thus been vitiated by delay and laches, hence, reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹50,000/- (Rupees Fifty thousand only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 78/2019
Date of Institution : 06-09-2019
Date of Decision : 20-12-2022

Shri Amit Kumar Rana s/o Shri Roshan Lal, r/o Village Satahan, P.O. Lagdhar, Tehsil Kotli, District Mandi, H.P. .Petitioner.

Versus

The Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana through Branch Manager, Branch Office SCO 1066-67, 1st Floor, Sector 22B, Chandigarh . . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For Respondent : Sh. Rakeshwar Jamwal, Manager (HR)

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Amit Kumar Rana s/o Shri Roshan Lal, r/o Village Satahan, P.O. Lagdhar, Tehsil Kotli, District Mandi, H.P. by the Managing Director, OPPO Mobiles (NR) Private Limited, Unit No.651-655, 6th Floor, JMD Megapolis, Sohan Road, Sector-48, Gurgaon, Haryana-122018 through Branch Manager, Branch Office SCO 1066-67, 1st Floor, Sector 22B, Chandigarh-160022 during January, 2018 without serving notice, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. It may be stated here that the notice was issued to the petitioner for 15.12.2022 for his appearance before the court at Mandi which was served upon him personally. Despite of this, the petitioner did not appear before this Court. Since there are neither pleadings nor evidence in support of the reference, the reference is answered in negative. Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 20th day of December, 2022.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 30/2020
Date of Institution : 02-03-2020
Date of Decision : 31-12-2022

Shri Ankush s/o Shri Hari Ram, r/o VPO Bharmour, Tehsil Bharmour, District Chamba, H.P. . *Petitioner.*

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P.

2. The Director, M/S IL & FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For Respondent No.1 : Sh. Anil Sharma, Ld. Dy. D.A.
For Respondent No.2 : Smt. Himakshi Gautam, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Ankush S/O Shri Hari Ram, R/O V.P.O. Bharmour, Tehsil Bharmour, District Chamba, H.P. by (i) the Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (ii) the Director, M/S IL & FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P., w.e.f. 01-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily paid Gardner in respondent no.1 Hospital through respondent no.2 w.e.f. 20.3.2018 to 30.5.2019 and his services were terminated orally w.e.f. 1.6.2019 without serving him any notice as required under Section 25-F of the Act. The petitioner has submitted that he has approached the respondents time and again for his re-engagement but was not reengaged despite of the fact that sufficient work was available. In this manner, the respondents is said to have also caused the violation of Sections 25-G and 25-H of the Act and therefore, his services be ordered to be re-engaged and termination be set aside. Apart from it compensation be also paid to him.

3. Respondent no.1 has resisted and contested the claim and contended that the petitioner was engaged through outsource agency and his services were terminated w.e.f. 1.6.2019 after the

committee decided to re-engage another outsource agency. It is submitted that the petitioner was neither the workman of respondent no.1 nor respondent no.1 has any concern with him, hence no violation of any of the provision of law was ever committed.

4. Respondent no.2 has resisted and contested the petition and submitted that the services of the petitioner were engaged only for one year and the petitioner had sworn affidavit at the time of his engagement to the effect that the engagement was temporary and for one year. Since the period of contract came to an end, therefore, his services were rightly terminated and he had no right to claim re-engagement.

5. Initially the petitioner was represented by Shri Anurag Thakur, Advocate, but later on he pleaded no instructions and notice was again served by this court upon the petitioner. The petitioner was served through his father but he did not put his appearance on 23.12.2022 and the case was called the case time. At the end of the day, the petitioner was ordered to be proceeded against exparte.

6. Since the petitioner was proceeded exparte and did lead any evidence in support of the allegations, therefore, the allegations are not established and the petitioner is not entitled for any relief as claimed by him. The respondents were not duty bound to lead evidence as the petitioner has to stand on his own legs. Since there is no evidence in support of the reference as well as his pleadings, the petitioner is, therefore, not entitled for any relief. The reference is, therefore, answered in negative. Parties are left to bear their costs.

7. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 36/2020
Date of Institution : 02-03-2020
Date of Decision : 31-12-2022

Shri Vijay Kumar s/o Shri Kamal Kumar, r/o Village Nakhli, P.O. Sarol, Tehsil & District Chamba, H.P. .Petitioner.

Versus

1. The Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P.

2. The Director, M/S IL & FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital Chamba, District Chamba, H.P. . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
 For Respondent No.1 : Sh. Anil Sharma, Ld. Dy. D.A.
 For Respondent No.2 : Smt. Himakshi Gautam, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the termination of services of Shri Vijay Kumar S/O Shri Kamal Kumar, R/O Village Nakhli, P.O. Sarol, Tehsil & District Chamba, H.P. by (i) the Principal, Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P. (ii) the Director, M/S IL & FS Human Resources Limited Government Pandit Jawahar Lal Nehru Medical College & Hospital, Chamba, District Chamba, H.P., w.e.f. 01-06-2019, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily paid Gardner in respondent no.1 Hospital through respondent no.2 w.e.f. 20.3.2018 to 30.5.2019 and his services were terminated orally w.e.f. 1.6.2019 without serving him any notice as required under Section 25-F of the Act. The petitioner has approached the respondents time and again for his re-engagement but of no avail despite of the fact that sufficient work was available and the respondents have also caused violation of Sections 25-G and 25-H of the Act and therefore, his services be ordered to be re-engaged and termination be set aside. Apart from it compensation be paid.

3. Respondent no.1 has resisted and contested the claim and contended that the petitioner was engaged through outsource agency and his services were terminated w.e.f. 1.6.2019 after the committee decided to re-engage another outsource agency. The petitioner was neither the workman of respondent no.1 nor respondent no.1 has any concern with him hence, no violation was ever committed.

4. Respondent no.2 has resisted and contested the petition and submitted that the services of the petitioner were engaged only for one year and the petitioner had sworn affidavit at the time of his engagement to the effect that the engagement was temporary and for one year. Since the period of contract came to an end, therefore, his services were rightly terminated.

5. Initially the petitioner was represented by Shri Anurag Thakur, Advocate later on he pleaded no instructions and notice was again served by this court upon the petitioner. The petitioner was served through his nephew, who is residing in the same roof, but he did not put his appearance on 23.12.2022 and called the case time and again and he was proceeded against exparte at the end of the day.

6. Since the petitioner proceeded exparte and he did lead any evidence in support of the allegations, therefore, the allegations are not established and the petitioner is not entitled for any

relief as claimed by him. The respondents were not duty bound to lead evidence as the petitioner has not stand on his own legs. Since there is no evidence in support of the reference, he (petitioner) is not entitled to any relief, therefore, the reference is answered in negative. Parties are left to bear their costs.

7. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 87/2017
Date of Institution : 28-03-2017
Date of Decision : 31-12-2022

Shri Nek Raj s/o Shri Rumalo, r/o V.P.O. Manhuta, Tehsil Bhattiyat, District Chamba, H.P.
. .Petitioner.

Versus

The Executive Engineer, I&PH Division, Dalhousie, District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Akshay Jaryal, Ld. Adv.
For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether termination of the services of Shri Nek Raj s/o Shri Rumalo, r/o V.P.O. Manhuta, Tehsil Bhattiyat, District Chamba, H.P. during year, 2000 (as alleged by the workman) by the Executive Engineer, I.&P.H. Division, Dalhousie, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If

not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, in brief, is to the effect that he was engaged in the year 1995 as daily paid beldar by the respondent department in IPH Division Dalhousie and his services were disengaged in the year 2000 by serving a notice dated 12.10.2000. Thereafter he approached Hon'ble Administrative Tribunal Dharamshala by way of O.A (D) No.581/2000 and it was later on disposed of on the ground of jurisdiction and thereafter petitioner raised the demand. The respondent is said to have retained juniors at the time of termination of the services of the petitioner despite of the fact that he had completed more than 240 working days in each calendar year before his termination. The respondent thus violated the principle of 'last come first go' and some workmen namely S/Shri Angrej Singh, Karnail Singh, Satish and Joginder were retained and regularized in violation to the provisions contained in Sections 25-G and 25-H of the Act. On such averments, the petitioner has prayed for his reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the claim on the ground that the petitioner has no doubt worked for more than 240 days in each calendar year w.e.f. January, 1995 to 2000 but there was shortage of funds in the Division and since the labour was surplus, therefore, as many as 363 workmen were retrenched by issuing them notice under section 25 of the Act. Compensation was paid to them as per the law. The principle of 'last come first go' was fully complied with and the seniority of the workmen was considered at the time of their termination. It is submitted that the respondent has not re-engaged any similar situated workmen and neither any junior was retained nor fresh hands have been engaged after termination of the services of the petitioner. The petitioner is said to have approached the court after many years. The respondent has prayed for the dismissal of the petition.

4. No rejoinder was filed by the petitioner and from the pleadings of the parties and the language of the reference, following issues were framed for determination on 06.12.2019:-

1. Whether the termination of service of the petitioner by the respondent during the year 2000 is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*
5. Whether the petitioner has not approached the Tribunal with clean hands and has suppressed the true and material facts, as alleged? . . .*OPR.*
6. Whether the petitioner has estopped by his act and conduct, as alleged. . . .*OPR.*

Relief.

5. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondents at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Negative

Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1

7. The petitioner has stepped into the witness box as PW1 and tendered his affidavit Ext. PW1/A. He has further tendered on record copy of demand notice Ext. PW1/B, his retrenchment notice Ext. PW1/C, mandays chart Ext. PW1/D, mandays chart of Shri Gagan Ext. PW1/E and the seniority list. When he was subjected to cross-examination, he pleaded his ignorance to the suggestion that as many as 363 workers were disengaged due to paucity of funds after complying with the provisions of Section 25-F. He had admitted that he received the notice before his retrenchment and the seniority of workers was kept in mind while retrenching their services. He has admitted that principle of last come first go was strictly followed by the department. When the petitioner himself has come up with the case that he was retrenched after serving a notice and compensation was paid to him, he has no case in his favour. The petitioner has himself admitted that principle of 'last come first go' was also strictly observed while terminating the services of as many as 363 workmen and he is one of them. The petitioner has therefore, been shattered in his cross-examination and he has failed to make out a case for his reinstatement. Had he pointed out specifically the names of those junior workmen who were retained at his cost, the position would have been entirely different.

8. The respondent has examined Shri Rakesh Chand Thakur, the Executive Engineer as RW1 in the witness box. He has also sworn his detailed affidavit to the effect that not only the notice was served upon the petitioner but he has also received the retrenchment compensation. He has further sworn his affidavit to the effect that principle of 'last come first go' was duly observed while terminating the services of as many as 363 workmen. He was subjected to cross-examination and he admitted that name of the petitioner figures at serial no.364 of the seniority list Ext. RW1/E. He denied specifically that the department has reinstated some of the workmen at its own. He has rather explained that, in case, any workmen have been re-engaged, such re-engagement was in compliance to the award passed by the court in favour of such a workman or the engagement was on compassionate grounds.

9. The respondent has tendered on record some documents which are material for the purpose of this case. Ext. RW1/D is the mandays chart of the petitioner and it is clear that he was engaged in January, 1995 as daily waged beldar. Ext. RW1/C is the notice served upon the petitioner and it is clear from the same that a cheque qua compensation of Rs.4590/- was handed over to the petitioner. There is no denial by the petitioner to this fact as the receipt is also proved as RW1/D on the records. The amount was deposited in the account of petitioner by the respondent. Ext. RW1/E is the seniority list as it stood on 31.12.2000. As per this seniority list, the name of the petitioner has been mentioned at serial no.364 as having been engaged in the month of January, 1995. Rest of the workmen are junior to him and it is not the case of the petitioner that any workman junior to him was retained. No seniority list has been placed on the record to prove that any workman junior to the petitioner was retained after the year 2000. In this seniority list, two

female workmen figure at serial nos.691 and 692 and they have been engaged on compassionate ground. The petitioner can not claim any parity with these workmen as they have been engaged on compassionate ground as they had lost their family members in service and the family in harness. The petitioner has named Shri Angrej Singh s/o Shri Raghu Ram as a person, who has been retained by the respondent. The mandays chart/seniority list shows that this Angrej Singh was engaged on 1.1.1987 much prior to the petitioner and therefore, he was senior to the petitioner. The petitioner can not claim parity with him. Similarly S/Shri Karnail Singh and Satish Kumar, are pump operators and they were engaged on 1.9.1994. They too are thus senior to the petitioner as the petitioner was engaged on 1.1.1995. The seniority list of these two pump operators is Ext.RW1/C. Otherwise also, the petitioner can not claim any parity with them as the petitioner was a daily waged beldar, whereas, these two persons are pump operators. The seniority list of Shri Joginder Singh s/o Shri Jaisi Ram has been placed on record as Ext.RW1/H and he was engaged on 1.3.1995. He is thus junior to the petitioner and he has been retained in service. When this document is carefully examined, it is clear that he was engaged as mason and not as daily waged beldar. There is no parity in between a Daily waged beldar and a mason as both the posts are entirely different. The petitioner, therefore, can not claim any parity with him. The parity of mason has to be examined with respect to another mason and not to the petitioner who was a daily paid beldar. Therefore, the petitioner can not contend that this mason is junior to him. It is for this reasons that name of Shri Joginder Singh has not been mentioned in the consolidated seniority list of daily waged beldar Ext.RW1/E. There is a separate seniority list of the mason and the petitioner can not claim any parity with him. The Learned counsel for the petitioner has brought on record two Awards passed in respect to one Shri Gagan Singh and another Shri Bhuri Singh. These two workmen are said to have been re-engaged after the Awards were passed by the court in their favour. In case, these workmen were re-engaged in compliance to the Awards passed by the court, and in case, such Awards have attained finality, the petitioner can not claim any parity with them as they have established their own cases on their own facts and their case can not be taken to give the same benefit to the petitioner as the petitioner has to stand on his own legs and prove his own case as per his pleadings. In this case, the petitioner has alleged that juniors were retained but he has failed to establish the same. The services of the petitioner were terminated after issuance of notice and payment of due compensation and after fully observing the principle of 'last come first go'. Therefore, the respondent is proved to have not caused violation of Sections 25-G and 25-H of the Act. This issue is held in negative.

ISSUE No. 3

10. Since the petitioner has filed the claim petition in support of the reference therefore it is maintainable. It is different matter that petitioner has failed to establish the claim hence this issue is held accordingly.

ISSUE No. 4

11. Since the question of delay and laches has not been referred by the appropriate Government, therefore, it can not be said that claim petition is bad on account of delay and laches. This issue is held against the respondent.

ISSUES No. 5 & 6

12. No evidence has been led on this issue by the respondent and it can not be said that petitioner has concealed some material facts which would have gone against him. There is also no evidence on the record to show that petitioner is estopped from filing of claim. There can not be any estoppel in the reference case as plea of estoppel has nothing to do with the reference. Moreover, there is no such reference received by this court for adjudication. Therefore, both these issues are held against the respondent.

13. In view of the findings on issue no. 1, hereinabove, the petitioner is held not entitled for any relief in this reference. This issue is also held against the petitioner.

RELIEF

14. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 79/2018
Date of Institution : 14-08-2018
Date of Decision : 31-12-2022

Shri Asho Ram s/o Shri Nuradh Ram, r/o Village Kiri, P.O. Kiri, Tehsil & District Chamba,
H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D Division, Bharmour, District Chamba, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Akshay Jaryal, Ld. Adv.
For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the industrial dispute raised by the worker Shri Asho Ram s/o Shri Nuradh Ram, r/o Village Kiri, P.O. Kiri, Tehsil & District Chamba, H.P. before the Executive Engineer,

H.P.P.W.D. Division, Bharmour, District Chamba, H.P. vide demand notice dated 08.04.2008 regarding his illegal termination of services during November, 2002 suffers from delay and laches ? If not, whether termination of services of Shri Asho Ram S/o Shri Nuradh Ram, R/O Village Kiri, P.O. Kiri, Tehsil & District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Bharmour, District Chamba, H.P. during November, 2002, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner, in brief, is to the effect that he was engaged in the year 1997 as daily paid worker by the respondent and his services were disengaged in November, 2002 without serving any notice. OA (D) No.388/2001 filed before the Hon'ble Administrative Tribunal Shimla camp at Dharamshala for condonation of fictional breaks while he was in service was disposed off by the Hon'ble Tribunal and the department was directed to treat the same as his representation. The grievance of the petitioner is that the junior workmen namely S/Shri Dharmu, Yugal Kishore and Raj Kumar, were permitted to continue with the work, whereas, his services were terminated in November 2002. He raised the demand in the year 2008 as the representation made by him was not decided earlier, but nothing was done by the respondent. The principle of 'last come first go' is said to have been violated and fresh hands were also engaged without giving him the priority. On such averments, the petitioner has prayed for his reinstatement with all the benefits i.e., seniority, continuity in service and back wages.

3. The respondent has resisted and contested the petition and admitted that the services of the petitioner were engaged in the year 1997. It is further explained that the petitioner worked till September 1998 where after he left the work at his own will and did not report to the same. He was, however, re-engaged as per order the orders of Hon'ble Administrative Tribunal passed in OA (D) No. 388/2001 decided on 21.8.2001. He again left the work in November 2002 and thereafter never approached the respondent. It is denied that the petitioner has been rendering services continuously with the respondent since 1997 to November, 2002 as alleged by him. He is said to have left the work at his own. It is denied that any junior was retained or any fresh hand was engaged without giving priority to the petitioner. One Shri Raj Kumar is said to have never worked with the respondent, whereas, Shri Yugal Kishore and Shri Dharmu remained regular in their work and their services were regularized as per the policy. The demand is said to have been raised after almost six years without any explanation and for this reasons, the petitioner, as per the respondent, is not entitled for reinstatement or any other relief.

4. No rejoinder was filed and from the pleadings of the parties and the material on the record, following issues have been framed for determination on 14.05.2019:-

1. Whether termination of services of the petitioner by the respondent during November, 2002 is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*

Relief.

5. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: Yes
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹1,50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 3 & 4

7. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

8. While taking into account the pleadings of the parties referred hereinabove, the first and foremost question this court needs to address is whether petitioner had remained in the job w.e.f. December 1997 to 2002 or he had left the work for three years at his own and then was re-engaged in August 2001 after orders of Hon'ble Administrative Tribunal. In other words, whether there was time to time termination of the services of the petitioner or there was a complete termination followed by fresh engagement?

9. The mandays chart of the petitioner placed on the record is a material document in this direction. As per this document, the petitioner worked for 12 days only in the year 1997. He worked for 134 days from January 1998 to September 1998 and thereafter he has been marked as absent till August 2001. He has worked from September 2001 till January 2002 in continuity and thereafter missed the month of February and April 2002. He worked for 15 days each in May to July and then again missed to work in the months of August to October. He worked for 15 days in the month of November 2002 and never reported again. There is a long gap in between September 1998 to August 2001 and the petitioner has not worked at all. This gap has to be treated as termination from the services and not the fictional break. The petitioner filed the original application in the year 2001 and it was disposed of on 21.8.2001 and this original application was ordered to be treated as representation. The petitioner moved a letter to the department, copy whereof has been proved on record as Mark-PB. This document is a very important and crucial for the purpose of this case. A careful perusal of this letter written by the petitioner to the Executive Engineer shows that the petitioner was claiming himself as a retrenched workman and his grievance was that the respondent was engaging fresh hands despite of the fact that the panel of retrenched labourers was available. The petitioner while forwarding the copy of order passed in the aforesaid original application prayed for his re-engagement. This letter Mark-PB clearly shows that the petitioner was claiming himself as a retrenched workman and was claiming his re-engagement on the ground that since senior retrenched workmen were very much available, therefore, his services be re-engaged before engaging a fresh hand. He has nowhere prayed that his time to time termination be condoned. From the language employed in the application Mark PB, the only inference that can be legitimately drawn is that the petitioner was retrenched in the year September 1998 and he remained idle till 2001. It is also clear that he made a demand from the department on finding that fresh hands were being engaged without giving priority to the senior retrenched workmen. It is in this manner that he was re-engaged in September 2001 itself. He has either abandoned the work or his services were retrenched in September 1998 and thereafter he remained idle. It was for the first time in 2001 when the petitioner agitated the matter by filing original

application and the original application was decided in the month of August 2001 itself. It was ordered to be treated as a representation. The representation was then considered by the department and services of the petitioner were re-engaged and he worked from September 2001 onward and that too in intervals. In November 2002, he again left the work as claimed by the respondent. When such is the position, claim of the petitioner that he was given breaks and his services were not terminated in between is wrong on the face of it. It can be safely concluded from the aforesaid material that the petitioner was re-engaged in September 2001 and therefore, his previous seniority, if any, was of no help to him as there was gap of full two years in between in between. The petitioner has neither prayed for condoning this period of two years as a break nor he has approached the appropriate Government with such grievances. The court, therefore, has to treat the engagement of petitioner w.e.f September 2001 when he was re-engaged after accepting his representation and not from the year 1997 as his services had come to an end in September 1998 and thereafter he filed original application for his re-engagement only in the year 2001 and it was ordered to be treated as representation and consequently his services were re-engaged in the year 2001. Thus the court has to treat the petitioner having been engaged for the purpose of this case in the year 2001 and not in the year 1997 as the break of two years between the two has not been bridged in any form by him. There is no reference regarding time to time termination for adjudication by this court.

10. The petitioner has worked in the year 2001 for 52½ days and in the year 2002 for 90 days and the sum of the both comes to 142 ½ days. If these number of days are treated for the purpose of this case even then the compliance of Section 25-F of the Act was not attracted in this case and petitioner has failed to make out a case for his reinstatement on the ground that notice under Section 25-F was not served upon him.

11. The petitioner has come up with the plea that workmen junior to him were retained at the time of his retrenchment. The petitioner has named Shri Yugal Kishore as a workman junior to him and his service are said to have been regularised. The mandays chart of the petitioner has been tendered as Ext.RW1/E and mandays chart of Shri Yugal Kishore as Ext.RW1/C. When the mandays chart of Shri Yugal Kishore is carefully examined it is clear that he was engaged in the year 1998 and he did not work in the year 1999, 2000 and 2001. He again worked in the year 2002 January and thereafter in the year 2003 he remained absent. From 2004 onward he worked in continuity and now his services are said to have been regularized. When it has been held that the petitioner's engagement for the purpose of this case shall be treated from September 2001 and not from December 1997 as there had been a gap in between, therefore Shri Yugal Kishore, who was initially engaged in the year 1998 can not be said to be junior to the petitioner, and therefore, there is no violation of Section 25-G of the Act. For the sake of repetition, it may be stated here that though petitioner had initially joined in December 1997 but he remained absent for more than two years in between 1998 to 2001 and in the year 2001 his services were re-engaged, therefore the previous seniority, if any, goes and the petitioner's seniority has to be counted from September 2001.

12. The petitioner has alleged that his services were terminated in the year 2002, whereas, the respondent has come up with the plea that petitioner has left the work at his sweet will and his services were never terminated. The petitioner has appeared as PW1 in the witness box and sworn his affidavit Ext.PW1/A. He tendered on the record copy of order dated 21st September 2001 as Ext. PW1/B and copy of demand notice Mark-PA, representation as Mark-PB and mandays chart Mark-PC. In his cross-examination he has specifically denied that he has left the work at his own. The respondent on the other hand examined Shri Jai Chand, Executive Engineer as RW1 who has sworn his affidavit Ext.RW1/A and was subjected to cross-examination at length. He has tendered some documents being the mandays chart etc.

13. The next factual dispute that requires adjudication is whether the services of the petitioner were terminated or he has abandoned the work at his own? The petitioner has alleged termination of his services whereas, the respondent alleges that petitioner has abandoned the work at his own. It may be stated at the very beginning that plea of abandonment is a plea of facts and the entire onus is upon the employer. The Act is a beneficial piece of legislation, and therefore, it leans in favour of the workmen. The court has to presume the facts in favour of the workmen and the onus is always upon the employer to rebut the aforesaid presumption. The workman has to discharge the onus only to the prima-facie level. Once he succeeds in doing so, the onus is immediately shifted upon the employer to lead the evidence to the contrary. Since, the employer is the custodian of the records, it is for him to place material documents maintained during the period claimed by the workman. The petitioner in the present case has specifically alleged that his services were terminated orally in November 2002 by the respondent. He has sworn his affidavit to this effect and has succeeded in discharging the initial onus placed upon him. The onus has thus shifted upon the respondent to prove that the petitioner has abandoned the work and his services were never terminated. The respondent has not placed on record any document to support the plea of abandonment. Abandonment is not automatic but the employer has to derive such a satisfaction after making efforts to call back the workman to work, when the work and funds are still available. In this case, the respondent has not pleaded that the work and funds had exhausted with the department. The only case of the respondent is to the effect that the petitioner had left the work at his sweet will. In case, the petitioner had absented himself from the work, it was the duty of the employer to have written a letter to the petitioner asking him to join the work as funds and work was still available. It was the duty of the employer to have called for the explanation of the petitioner for his absence, and in case, the petitioner did not report to the work despite of such demand then the respondent could have presumed that petitioner was not willing to work. Such presumption was supposed to be recorded in writing by the respondent so that the document containing such satisfaction could be brought before the court, in case, any dispute was raised at later any point of time. In this case, the respondent has neither written a letter to the petitioner nor called for any explanation and nor has taken any steps to call back the petitioner to report for the work. The respondent has also not placed on record any documentation prepared at the time when the presumption of abandonment was drawn by the respondent. In other words, the respondent has not taken any steps to call back the petitioner. Once the respondent has not taken any steps to call back the petitioner, therefore, the plea of abandonment of the work by the petitioner is not established and the only conclusion that can be legitimately drawn is that the services of the petitioner were orally terminated in November, 2002.

14. When the material on the record is carefully examined, it becomes clear that there has been violation of Section 25-H of the Act in this case. Shri Dharmu was engaged in January 2003 and the petitioner who was already out of work on account his termination was not given priority over the new workman namely Sh. Dharmu. The mandays chart of Shri Dharmu has been tendered on record As Ext.RW1/D and it shows that he was engaged in January 2003 and he worked till 2013 as a daily wager and thereafter his services were regularized. Once the respondent intended to engage fresh hands in the year 2003, it was duty bound to give the first priority to the petitioner, who was an old workman having been retrenched in the year November 2002. The respondent is proved to have neither called the petitioner nor offered the work to the him. The respondent rather preferred a fresh hand namely Shri Dharmu over the petitioner, hence the respondent is proved to have violated the provision contained in section 25-H of the Act.

15. The learned Deputy District Attorney for the respondent has heavily relied upon the issue of delay and laches in this case and has submitted that since reference has been received after a considerable period, therefore, the petitioner is proved to have slept over his rights and therefore, he is not entitled for reinstatement. On the other hand, the learned counsel for the petitioner has argued that the petitioner has raised the demand at earliest and it were the Authorities, who did not pursue the matter with promptness, therefore, the petitioner can not be blamed for the same.

16. It is clear from the reference that effect of delay and laches on the case of the petitioner has been referred to this court for adjudication. The petitioner was disengaged in November 2002 and he raised the dispute in April, 2008 after six years. There is no satisfactory explanation furnished by him for raising the dispute at the earliest. Even Shri Dharmu was engaged in January, 2003. Again as many as five years elapsed in between but the petitioner did not agitate the matter. The petitioner has tried to justify the delay on the ground that he had made a representation which was never decided but no such fact is made out from the record. The petitioner has made a representation in the form of Mark-B praying that his services be re-engaged as panel of senior retrenched workmen was available. He had also forwarded the copy of the order passed by the Hon'ble Administrative Tribunal. Soon after this representation, the services of the petitioner were re-engaged and were again terminated in November 2002. He has not taken any steps thereafter. Thus he has slept over his rights for more than five years and has approached the authorities under the Act after inordinate delay. Law is well settled by the Hon'ble High Court of Himachal Pradesh on this point in Prakash Chand vs. Executive Engineer, HPPWD, Civil Writ Petition No. 273/2019 decided on 09 April, 2019, in which the retrenched workman had raised the dispute after nine years before this court and he was awarded compensation to the tune of 1 lakh. The Hon'ble High Court in Writ Petition was pleased to affirm the award holding that much water had already flown under the bridge and thus no error was committed by ordering the compensation in place of reinstatement. The Hon'ble High Court again in Vyasa Devi vs. Executive Engineer, HPPWD, Civil Writ Petition No.640 of 2019 decided on 24 April, 2019 was pleased to hold in the similar manner and the award of the Tribunal whereby compensation of Rs. 60,000/- was awarded in her favour was upheld as there was delay of 11 years in raising the demand by Smt. Vyasa Devi.

17. However taking into account the facts and circumstances of the case and the length of delay occasioned in raising the demand ends of the justice shall be met in case a lumps sum ₹1,50,000/- is awarded in favour of the petitioner as compensation in lieu of reinstatement and other consequential benefits. Petition is held to be maintainable. Issues no. 1, 3 and 4 are decided accordingly.

ISSUE No. 2

18. In view of the aforesaid discussions of the issues above, the petitioner is held entitled to ₹1,50,000/- (Rupees One Lakh & Fifty Thousands only) in lieu of reinstatement and other consequential benefits. This issue is also decided accordingly.

RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-H of the Act as well as inaction of the respondent in this case but the petitioner had raised demand after a gap of more than five years and his claim for reinstatement has been thus vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹1,50,000/- (Rupees one lakh & Fifty Thousands only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 18/2019

Date of Institution : 25-2-2019

Date of Decision : 31-12-2022

Smt. Gujro w/o Shri Dhano, r/o Village Kaila, P.O. Khundel, Tehsil and District Chamba,
H.P.Petitioner.

Versus

The Divisional Forest Officer, Chamba District, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. I. S. Jaryal, Ld. AR.

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether the alleged termination of daily wages services of Smt. Gujro W/O Shri Dhano, R/O Village Kaila, P.O. Khundel, Tehsil and District Chamba, H.P. from time to time during November, 2007 to July, 2017 & finally terminated by the Divisional Forest Officer, Chamba, District Chamba, H.P. during April, 2017, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?”

2. After receipt of the above reference, a corrigendum reference dated 8th June 2020 has also been received from the appropriate Government which is given below:

“Whereas, a reference has been made to the Ld. Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. vide notification of even no. dated 24-01-2019 for legal adjudication. However, inadvertently the correct facts could not be mentioned about the date of time to time termination and final termination of the claimant in the said

notification. Therefore, the date of time to time termination and final termination of the claimant may be read as “November, 2007 to January, 2018 and finally terminated during January, 2018” instead of “November, 2007 to July 2017 and finally terminated during April, 2017” as alleged by workman”.

3. The case of the petitioner as made out from the claim is that she was engaged as daily waged beldar in the year 2007 and she worked in the same capacity till 2017 but with intermittent breaks. She was given intermittent breaks intentionally so that she could not complete 240 days continuous service in each calendar year and she could be deprived of the benefits of regularization. Her services were finally terminated in the year 2017 without assigning any reasons and without complying with the provisions of law whereas, the workmen junior to her and favourite to the officers of the department were retained and they were given full work and violation of rule of seniority and principle of ‘last come first go’ took place. The petitioner has given a long list of workmen in para no.4 of the claim who are still working with the respondent and are either juniors to her or were engaged as fresh hands without giving priority to her. The petitioner has claimed that she is not gainfully employed and she is, therefore, entitled for back wages as well and time to time termination be condoned and the period of her absence be counted towards the continuity of service and seniority and her services be also ordered to be reinstated with all the benefits.

4. The respondent has resisted and contested the claim and explained that the petitioner was engaged as a seasonal forestry worker in Khuddal and Charodi nursery w.e.f. 11/2007 and she worked intermittently upto January, 2018 as is clear from the mandays chart enclosed with the reply. The respondent has denied that any junior workman to the petitioner was retained and intentional breaks was given to her. It is explained that she used to remain absent at her own sweet will and no junior to her was retained. It is further explained that forestry work was seasonal in nature and subject to availability of work and funds and whenever funds in Khuddal nursery and Charodi nursery were not available, she was asked verbally to work in another beat but she refused every time and did not report to the work, hence she was herself liable for short number of working days in her credit and she never completed the work of 240 working days in any of the calendar year so as to avail the benefit of continuous service. The petitioner is said to have worked on muster roll and bill basis and there is neither any violation of Sections 25-F 25-G or 25-H of the Act and the claim petition is said to have been filed with ulterior motives. It is prayed that the petition be dismissed.

5. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply with the emphasis on the fact that breaks were given to her intentionally so that she was not able to claim the benefit of regularization in accordance to the time to time policy of the State Government.

6. From the pleadings of the parties and language of the reference, following issues were framed for determination on 05.3.2020:-

1. Whether time to time termination of services of the petitioner by the respondent during November, 2007 to July, 2017 and finally during April, 2017 was illegal and unjustifiable as alleged? If so, its effect? . . .*OPP.*
2. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
3. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*
Relief.

8. It may be stated here that after receiving the corrigendum reference dated 7.4.2021 the issues were re-casted/ re-framed for determination.

1. Whether time to time termination of services of the petitioner by the respondent during November, 2007 to January, 2018 and finally during January, 2018 was illegal and unjustified as alleged? If so, its effect? . . .*OPP*.
2. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
3. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR*.

Relief.

9. I have heard learned Authorized Representative for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

10. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Yes
Issue No.2	: No
Issue No.3	: No
Relief.	: Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 3

11. All these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

12. The petitioner has led evidence and examined herself as PW1. Her affidavit is Ext.PW1/A in which she has mentioned all the facts pleaded by her in the claim petition. She has emphasized on the fact that breaks were given to her intentionally so that she could not complete the work of minimum 240 days to avail the benefits of Section 25-B of the Act and she was subjected to unfair labour practices. She has further stated about the fact that the juniors were retained at the time of her termination. The petitioner has also led documentary evidence on the record which is material for the purpose of this case and discussed hereinafter.

13. The first and foremost question to be looked into is whether the petitioner is proved to have willfully absented from the work or she was given intentional breaks by the respondent? It may be stated here that the Industrial Disputes Act is a beneficial piece of legislation and the workman has to prove his case only to the prima-facie level. Once the workman proves his case to the prima-facie level, the onus is shifted upon the employer to disprove the case of the petitioner. In the case in hand, the respondent has examined Shri Amit Sharma, Divisional Forest Officer, Chamba as RW1. He has sworn his affidavit Ext.RW1/A by replicating those facts which are pleaded in the reply. When the contents of the reply are carefully gone through, it is clear from paras no. 3 and 4 of the same that whenever the funds in Khuddal and Charodi nursery were not available, the petitioner was asked verbally to work in other beats but she refused to work every time, hence, she could not complete 240 days work in any of the calendar year for her own fault. When the contents of the para no 2 of the reply are examined, it is mentioned therein that the petitioner use to remain absent at her own will and she was not given any breaks. Once the

respondent has pleaded that funds were exhausted in Khuddal and Charodi nursery, and therefore, the petitioner was asked to work in another beat, the entire onus is shifted upon the respondent. The mandays chart of the petitioner has been placed on the record by the respondent as Ext.RW1/B and it begins from the year 2007 in which she has worked only for 31 days. In the year 2008 she has worked for 122 days, in the year 2009, 2010 and 2011 she had not worked at all and in the year 2012 she has worked for 80 days and in the year 2013 she has worked for 95 days, in the year 2014 she has worked for 101 days and in the year 2015 for 142 days, in 2016 for 28 days and 2017 for 22 days. There is a gap of four years in between 2008 to 2012 in which she is said to have not worked even for a single day.

14. The petitioner on the other hand, has alleged that the respondent has subjected her to unfair labour practices and in order to cause wrongful loss to her, the respondent has even filed and proved an incorrectly prepared mandays chart on the record. The petitioner has obtained the copies of the muster rolls for the years 2008 to 2012 in order to prove that she has worked every year for many months but the respondent is wrongly contending that she has not worked in between the year 2008 to 2012. The petitioner has obtained copies of the muster rolls under RTI and has tendered the same on the record as Ext. PW1/B-2 TO PW1/B-27. It is clear that Ext. PW1/B-2 is the muster roll for the month of March 2008. the petitioner has been shown to have worked for 24 days in this month. Similarly, Ext. PW2/B-3 to Ext. PW1/B-5 are muster rolls for the months of July, August and December 2008. The petitioner has been shown to have worked for 31 days each during these months. Ext. PW1/B-6 to Ext. PW1/B-9 are the muster rolls for the months of March, April, May and October, 2010. The petitioner has worked for 25, 24, 25 and 16 days respectively during these months and her presence was marked in these muster rolls. The payment was also made to her accordingly. It is very much clear that the presence of the petitioner has been marked for four months in the year 2009 and payment was released in her favour. Ext. PW1/B10 to Ext. PW1/B14 are muster roll for the months of January, March, September, October and December, 2010 and the petitioner has been shown to have worked during all these months. The petitioner has worked for 31 days in January, 26 days in March, 30 days in September, 15 days in October and 31 days in December, 2010. Wages were also paid for her accordingly. Ext. PW1/B15 is muster roll for the month of July, 2011 and petitioner has been shown to have worked for 31 days. She was also paid accordingly. Ext. PW1/B 16 to Ext. PW1/B 18 are three muster roll pertaining to the year 2012 and the petitioner is shown to have been worked for 20 days in August, 30 days in September and 27 days in November, 2012. She was paid accordingly. Ext. PW1/B19 to Ext. PW1/B 23 are muster roll for the months of January, April, June, July and February, 2013. The petitioner has worked for 21, 30, 22, 19 and 20 respectively and was paid accordingly. Ext. PW1/B24 is muster roll for January, 2014 and Ext. PW1/B25 is muster roll for June, 2014. Ext. PW1/B26 is another similar muster roll and petitioner is shown to have worked during all these period. Ext. PW1/B27 also show similar entries. These muster rolls have come from proper custody and in a legal manner by obtaining copy thereof under RTI. There is no reason to dispute the correctness of the same. The petitioner led evidence and tendered these muster rolls in the evidence. Her affidavit is Ext. PW1/A and muster roll has also been tendered by her on the record. These muster roll have not been assailed during her cross-examination and thus these documents can be safely relied upon. The perusal of all these muster roll, therefore, show that the mandays chart in respect to the petitioner has been wrongly prepared by the respondent and she has been shown as absent in the years, 2009 to 2011. The mandays chart does not make a reference of the year 2009, 2010 and 2011. This mandays chart cannot be relied upon so far as the years, 2009 to 2011 are concerned and it is proved from the statement of the petitioner and the documentary evidence that she has worked in continuity w.e.f. year 2007 and she was given terminal breaks in between. The respondent has although examined Sh. Amit Sharma as RW1/A but he has not said anything about the muster rolls produced by the petitioner on the record. He has denied the suggestions regarding the fictional breaks.

15. It is therefore, clear from the aforesaid material that the petitioner has worked with breaks in between 2007 to 2018. she has specifically spoken on oath that she was given intentional breaks in service so that she could not complete minimum 240 working days in each year and her right of regularization could be frustrated. It is therefore, for the respondent to explain as to why these breaks in the services of the petitioner took place. The respondent has come up with the plea that funds were exhausted in two beats in which the petitioner used to work and when she was asked to work in another beat she refused to work in the same. This fact could have been proved by leading cogent and convincing evidence. The respondent has not placed on record any document to show that funds were exhausted in the year 2007 to 2018 and the work in these beats was stopped for these reasons. No writing to this effect was prepared at that time for the purpose of the records. After all, the works of the forest department are done by way of proper documentation and everything is recorded in writing so that the same could be used as evidence in the court during any litigation pertaining to those periods. No material whatsoever has been placed on record by the respondent to prove that in between 2007 to 2018 the funds were exhausted in two beats Khuddal and Charodi. Again, there is no document on the record to suggest that the petitioner was asked to work in another beat. Bare allegations are not sufficient to prove the stand taken by the respondent. Had the petitioner been asked to work in another beat by the respondent department, at least, the names of those beats where the work was available throughout the year could have been mentioned in the pleadings. Since no evidence has been led by the respondent on this aspect, therefore, the presumption goes that there was time to time termination of the petitioner in between 2007 to 2018 with the sole motive to let her not complete 240 working days in any calendar year so that she could not avail any benefits available to her under the law. The respondent has not led any cogent evidence on the record to meet this situation. The petitioner has submitted on oath that she was given work on few occasions and thereafter her services were terminated. The petitioner has led every documentary evidence on the record to show that some other workmen were given work throughout the year and their services have now been regularized with the passage of time. Ext.PW1/C is the mandays chart of one Sh. Lekh Raj who was engaged in the year 2007 and he worked in continuity in the same beats. In the year 2008 he has worked for 236 days and in the year 2011 for 244 days. If work was not available in those beats how work was given to this workman is not clarified by the respondent. Ex.PW1/D is mandays chart of Shri Saran Dass. He has also been given work for more than 240 days in each calendar year after the year 2007. Ext.PW1/E is the mandays chart of Shri Ambia Ram. He was also given sufficient work every year. Ext.PW1/H is the seniority list of one Shri Surinder Kumar who was engaged in the year 2008 and he was also given work for more than 240 days in several years. Seniority list of Shri Karam Singh, who was engaged in February, 2008 is Ext.PW1/I and he was also given sufficient work in the every year. When work was available for these workmen why the petitioner was not given work for more than 240 days in a year? Moreover, no document has been filed and proved by the respondent to show that there was infact no work and funds in the beats in which the petitioner used to work. There is again no document on the record which could show the petitioner's refusal to work in another beat. The mandays chart of the petitioner shows that sometime she has been shown to have worked on bill basis yet number of days have been mentioned against the same. It shows that she was intentionally shown to have worked on bill basis with a view to prevent her from claiming any right under the law, whereas, her number of working days have also been given. Once her working days are given in the mandays chart, it can not be said that she has worked on bill basis as bill basis work has no connection with the working days. Bill basis work is a sort of individual contract where the work is assessed on the basis of the approved rates and the payment is made accordingly. The work is never assessed in terms of the working days. In the case in hand, since the work of the petitioner has been assessed in terms of working days, and therefore, it is not the Bill basis work but it is the work done on daily wage basis, and the work of the petitioner is covered under daily wages. In the absence of any document tendered on the record by the respondent that funds and work have actually exhausted and the petitioner has refused to work in other beats, the ultimate presumption goes that she was subjected to time to time termination by the respondent and she was

subjected to unfair labour practices. It is also established that the petitioner was intentionally not made to complete 240 days work every year after 2007. Since the petitioner is proved to have been subjected to unfair labour practices, therefore, it has to be presumed that the petitioner was always ready and willing to work after the year 2007 and work and funds were also available but she was intentionally not given the work. Once unfair labour practice is proved, the petitioner is entitled to the relief of condoning time to time termination. It is therefore, held that petitioner shall be treated to have worked for minimum 240 days after the year 2007 till her services were finally terminated by the respondent. Since her services were finally terminated in the year 2018 by showing that she has worked on bill basis, the petitioner is entitled for the reliefs under the law. The petitioner has placed on record the information obtained under RTI Ext.PW1/G (19 pages) and it is clear that DPCs regarding regularization of daily wagers had taken place in which several workmen were regularized. It is clear from this list that at serial no.26 Shri Piyar Singh s/o Shri Roshan Lal was engaged in the year 2007 and he was also held fit for regularization similarly Shri Nihalu s/o Sh. Bagha Ram at serial no.27 was engaged in the year 2008 and was declared fit for regularization. Rest of the workmen upto serial no.37 are junior to the petitioner and they were also declared fit for regularization and their services were regularized in due course. Since it has been held herein above that the petitioner had given fictional breaks w.e.f. 2007 to 2018 intentionally therefore, her seniority has to be reckoned from the year 2007 and thus all the aforesaid workmen are junior to her and by giving fictional breaks to the petitioner time and again the respondent has violated Section 25-G of the Act and petitioner is also entitled for the same treatment as her juniors were given. The petitioner has tendered on record even a mandays chart of Shri Surender Kumar s/o Shri Tej Singh Ext.PW1/H, Shri Karam Singh Ext.PW1/I and it is clear from the same that these workmen were not given the fictional breaks at all whereas, the petitioner was given fictional breaks. The petitioner has been able to prove violation of Section 25-G of the Act. The petitioner has placed on record another information received under RTI as Ext. PX-1 to Ext. PX-8 which are the office orders regarding regularization of workmen junior to the petitioner. The petitioner is therefore, entitled for the same treatment.

16. In view of aforesaid discussion it is held that the respondent has not only violated Section 25-F of the Act but has also violated Section 25-G of the Act and the petitioner, is therefore, held entitled for the relief of reinstatement forthwith and the fictional breaks are ordered to be condoned. In other words, it is held that the petitioner had worked w.e.f. the year 2007 to 2018 in continuity and had completed minimum 240 working days in each year till the year 2017 and her services were also terminated in January 2018 despite of the fact that she had worked for 240 days in preceding 12 calendar months. The petitioner is held entitled for seniority and continuity in service since the year 2007 when she was initially engaged and petitioner is also held entitled for compensation to the tune of Rs.2,00,000/- instead of back wages for the period she was shown as absent by the respondent. The respondent is also directed to consider the case of the petitioner for regularization forthwith as the workmen junior to her have already been regularized. All the issues are decided accordingly.

RELIEF

17. In view of my discussion, it is held that the petitioner has proved that her time to time services and final termination was illegal and in violation to the provisions contained in Sections 25-F and 25-G of the Act by the respondent. The respondent is directed to reinstate the petitioner in service forthwith as well as to consider the case of petitioner for regularization as to workmen junior to her stands already regularized. She is also entitled for seniority from the year 2007 onward as well as she is held entitled to lump-sum compensation tune of Rs.2,00,000/- (Rupees Two Lakhs Only) in lieu of back wages, which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum from the date of award till the date of its realization. The claim petition is, therefore, partly allowed. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 288/2015

Date of Institution : 13-7-2015

Date of Decision : 31-12-2022

Shri Krishan Lal s/o Shri Longu Ram, r/o Village Ropa, P.O. Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Suket, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether time to time termination of the services of Shri Krishan Lal s/o Shri Longu Ram, r/o Village Ropa, P.O. Seri Kothi, Tehsil Sunder Nagar, District Mandi, H.P. during June, 2001 to July, 2009 and finally during August, 2009 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that he was initially engaged on 1.1.1998 as daily wage beldar in Seri Beat and had worked in continuity till 2001 whereafter fictional breaks were given to him till the year 2009 and his services were finally terminated in August, 2009 without serving any notice upon him. He was thus subjected to unfair labour practices. Workmen junior to him namely Shri Khub Chand, Kalu Ram and Bhawani Singh etc. were retained and their services were regularized with the passage of time. Fresh hands were also engaged and his name was mentioned at serial no.387 of the seniority list dated 31.3.2003 and 30 workmen are junior to him in the list. The petitioner approached the respondent time and again for his re-engagement but his services were not re-engaged. Feeling compelled, he raised the demand and when the conciliation proceedings failed, the reference was made by the appropriate government to this court. In the aforesaid background, the petitioner has prayed that his time to time termination be condoned and after ordering his reinstatement, he be held entitled for back wages, seniority, past service benefits and compensation as well.

3. The respondent has resisted and contested the claim on the plea of maintainability and submitted that petitioner was initially engaged to carry out the seasonal works in June 2001 and he has worked intermittently upto August, 2009 where after he left the work at his own sweet will and did not report again. Only those workmen were retained and regularized who worked in continuity and completed minimum 240 working days in each calendar year. The respondent had denied that the principle of 'last come first go' was violated in any manner. The matter is said to have been raised after a considerable delay, and therefore, the petitioner is not entitled for any relief. It is submitted that petition be dismissed.

4. Rejoinder was not filed by the petitioner and from the pleadings of the parties and language of the reference, following issues were framed for determination on 07.1.2017:-

1. Whether time to time termination of service of the petitioner by the respondent during June, 2001 to July, 2009 is/was legal and justified as alleged? . . .*OPP*.
2. Whether final termination of service of petitioner during August, 2009 is/was legal and justified as alleged? . . .*OPP*.
3. If issue no.1 or issue no.2 are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . . .*OPR*.

Relief.

5. I have heard learned Deputy District Attorney for the respondent at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: decided accordingly
Issue No.2	: decided accordingly
Issue No.3	: decided accordingly

Issue No.4 : No

Issue No.5 : No

Relief. : Petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

7. The petitioner has raised the plea that his services were terminated from time to time w.e.f. June, 2001 to August, 2009 by exercising unfair labour practice by the respondent. The mandays chart of the petitioner has been tendered on record as Ext.RW1/B. A careful perusal of this document shows that the petitioner has worked only for 20 days in June, 2001 and he worked in between February to May for 110 days in the year 2002. Thereafter he remained absent in the year 2003 to 2007 and did not work even for a single day. He had worked for 11 days each in April and May, 2008. Thereafter he worked only for 19 days in August, 2009 and thereafter he has not worked at all. The question is whether it is time to time termination or something else. Time to time termination is generally interpreted to mean those fictional breaks which are given every year by the employer to the workman with a view to prevent the workman to complete the work of 240 days in each calendar year so that either such workman could be denied the benefit of regularization as per the policies or is prevented from completing 240 days of work in preceding 12 calendar months of his termination so that he is not able to avail benefit of Section 25-F of the Act. In the case in hand, the petitioner remained absent in between May 2002 to April 2008 and he has neither raised the demand for his reinstatement nor he has approached any authority along with his grievances. To remain absent for around seven years and not to agitate the matter at any quarter can not be termed as time to time termination but it is final termination. Thus the petitioner, who was terminated seven years back had slept over his rights and went in search of the work in the eighth year and he was re-engaged only for two months and that too for 11 days each. Thereafter he again did not report to the work and it was in the year 2009 when he again reported to the work only for 19 days in August, 2009. All these facts show that the services of the petitioner were not terminated time to time and he has rather absented from the work. Had his services been terminated from time to time he should have raised the voice and made a demand at earliest. This is not time to time termination and no such gap can be condoned in the name of fictional breaks as such order shall encourage those workmen, who sleep over their rights for several years and seek the relief of continuity of service on the plea that he was terminated from time to time. The petitioner has appeared as PW1 in the witness box and sworn his affidavit in a general manner. He denied that no breaks were given to him and he used to absent himself. Mere statement of the petitioner that he was given time to time breaks will not serve the purpose when there is a long break of seven years in between. Had the petitioner raised any demand in between, position would have been different. The petitioner was rather freshly engaged after seven years and he can not take advantage of his own wrong. Therefore issue no.1 is held in negative and it can be held at the most for the purpose of this case that he was engaged in the year 2009.

ISSUES No. 2, 3 & 5

8. All these issues are taken up together for discussion and disposal as they are interlinked so as to avoid repetition of facts and evidence.

9. The petitioner has worked for 19 days in the year 2009 and thereafter he did not work even for a single day. The petitioner has come up with the plea that his services were terminated in the year 2009 whereas, the respondent has pleaded that the petitioner has himself abandoned the work. The plea of abandonment being a plea of facts has to establish by the employer by leading

cogent and convincing evidence. The respondent has examined Shri Suneet Bhardwaj, Divisional Forest Officer as RW1 in the witness box. He has sworn his affidavit Ext.RW1/A. In this affidavit, he has said that petitioner left the work at his own. When he was subjected to cross-examination he admitted that no notice was issued to the petitioner to call him back and no inquiry was held in the matter of his absence. No proceedings were held after the petitioner left the work in 2009 to show that he was asked to join back and was also apprised of his rights but he did not join despite of such opportunity. When the respondent has not discharged the onus placed upon it, the plea of abandonment is not established. Ignorant labour class can not be deprived of their valuable rights without apprising them of the same. It is the duty of the respondent to call back the workman in the case of his absence and apprise him of the valuable rights he is supposed to get with the passage of time or such rights have already accrued in his favour. A poor and illiterate workman can not be left at his own mercy and Industrial disputes Act being a beneficial piece of legislation leans in favour of the labourer rather than the employer. In the case in hand, once the employer has not taken any steps to call back the petitioner, in case, he had absented himself in the year 2009, the plea of the abandonment as taken up by the respondent fails. Once the plea of abandonment is not established it is to be presumed that the services of the petitioner were terminated in the year 2009.

10. Since the petitioner has not worked for minimum 240 days before his termination in the year 2009 therefore, he can not take the benefit of Section 25-F of the Act. The petitioner has come up with the plea that workmen junior to him were retained, whereas, his services were terminated. The court has to examine the seniority list Ext. PX to find out whether any workmen junior to petitioner was retained. As per this document Ext. PX several workmen were engaged till the year 2002. Since the petitioner has left the work in the year 2009 therefore, these workmen are senior to him and the petitioner can not claim that they were junior to him. The seniority of the petitioner has to be reckoned from the year 2009 as it has already been held that he has failed to make out a case to condone time to time breaks. Therefore, the petitioner has failed to prove that the respondent has violated the provisions of Section 25-G of the Act.

11. The respondent has placed on record another seniority list as it stood on 31.3.2014 on the record as Ext.RW1/C. When this document is carefully examined, it becomes clear that one Shri Amar Singh s/o Shri Beli Ram was engaged in 11/2009 in Kangoo Beat. As per the mandays chart, the petitioner had worked for 19 days in the year 2009 (August) and his services have been terminated thereafter. When the services of the petitioner were terminated in August 2009, the respondent was bound to give him first opportunity in case fresh hand was to be engaged. The fresh hand was engaged in November 2009 after three months and petitioner was not given priority in the matter of engagement. There is no document on the record to show that before the services of Shri Amar Singh were engaged the petitioner was served with any notice asking him to report to the work in the capacity of senior retrenched workman. Since the work and funds were available and fresh hands were required in November 2009, the petitioner, whose services were terminated in August 2009 should have been re-called in November 2009 before engaging fresh hand Shri Amar Singh. Had the petitioner been called to work, position would have been different. Thus violation of Section 25-H of the Act took place in this case when fresh hand Shri Amar Singh was engaged without giving the petitioner an opportunity to work, and it is therefore, not material whether the petitioner has worked for minimum 240 days or not before his termination. A fresh hands was engaged without giving the petitioner an opportunity to work and this is violation of Section 25-H of the Act. Shri Suneet Bhardwaj (RW1) has tendered on record all these documents and nothing has been said by him to explain the situation.

12. The petitioner has not placed on the record the demand notice raised by him. Even the respondent has not mentioned about the date of such demand raised by the petitioner. When the contents of the reference received by this court are examined, it becomes clear that the matter was submitted on 20.08.2014 to the Labour Commissioner by the labour Inspector cum conciliation

officer after the conciliation proceedings failed. It therefore, appears that the petitioner has raised the demand in the year 2014. Thus the services of the petitioner were terminated in August 2009 and the fresh hand was engaged in the year November 2009. The cause of action to raise the dispute has thus arisen in favour of the petitioner in the month of November 2009. The only violation on the part of the respondent is that the petitioner should have been recalled in the month of November 2009 when fresh hand Sh. Amar Singh was engaged, but he was not called.

13. The respondent has taken the serious objection of delay and laches in this case. Issue No. 5 has also been framed on this plea. It is the case of the respondent that the petitioner has raised the issue after a considerable delay. It becomes clear from the reference itself that the matter was submitted to the Labour Commissioner in the year 2014 when the conciliation failed. Thus there is a delay of about five years in raising the demand. The question for consideration is whether such a delay can be taken into account to deny the relief or mould the relief, which is otherwise, available to the petitioner?

15. It may be submitted at the outset that this court has no original jurisdiction in the matters, but this court enjoys the referral jurisdiction only. Whatever has been referred by the appropriate government for adjudication to this court, only those issue are within the jurisdiction of this court. It is expected from the parties that whatever issue they want to raise, they must raise before the conciliation officer at the very beginning. In case, those issues are settled amicably by the conciliation officer, the matter comes to an end then and there, and in case, the issues are not resolved, the conciliation officer submits the matter to the appropriate government for making a reference on the points raised by the parties to the Labour court for adjudication. It is in this manner, the reference is made to the Labour court and the court is supposed to limit itself to those points referred to it. There may be a situation that a particular party has raised a particular point before the conciliation officer and the appropriate government does not refer that particular question for adjudication to the Labour court. The aggrieved party is not without any remedy. Such an aggrieved party can assail the reference by invoking the writ jurisdiction of the Hon'ble High Court so that the reference is modified. In case, such a jurisdiction is not invoked, in that event the reference becomes final and no new question can be raised for the first time before the labour court. The labour court also has no jurisdiction to examine any other point even if it finds the same attractive. In the case in hand, it is not clear whether the plea of the delay and laches was raised by the respondent in the reply to the demand notice and before the conciliation officer. The reference received by this court does not find the question of delay and laches referred to this court for adjudication. The reference has attained finality as it was not assailed by the respondent by invoking the writ jurisdiction. When such is the position, this court can not examine the question of delay and laches for the first time when such reference has not been received.

16. A similar question was raised and set at rest by the Hon'ble High Court of H.P in case titled as **State of H.P &Anr. Vs. Mahinder Singh reported in 2017 LLR 1256**. The State Government of H.P had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd. v. Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief.

17. In the case in hand also since the reference of delay and laches has not been received by this court, therefore the court can not examine the delay and laches and its impact upon the case

of the petitioner. The case of the petitioner can not be dismissed or the relief can not be molded for the simple reason that there was no reference regarding delay and laches and its impact upon the petitioner. Thus since the violation of section 25-H is proved in this case, therefore, the petitioner is held entitled for reinstatement. However, taking into account the number of days the petitioner has worked and the fact that he has raised the demand after five years, he is held not entitled for the relief of back-wages. He is also held entitled for seniority and continuity in services from the date of the demand notice. All these issues are decided accordingly.

ISSUE No. 4

18. In view of the above discussions, the claim petition is however maintainable as it has been filed in support of the reference, hence this issue is held in negative against the respondent.

RELIEF

19. In view of my above discussions, the claim petition succeeds in part and is partly allowed and the petitioner is held entitled for reinstatement forthwith. However, taking into account the number of days the petitioner has worked and the fact that he has raised the demand after five years, he is held not entitled for the relief of back-wages. He is also held entitled for seniority and continuity in service from the date of the demand notice. The respondent is directed to reinstate the services of the petitioner forthwith. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)**

Ref. No. : 190/2017

Date of Institution : 29-8-2017

Date of Decision : 31-12-2022

Shri Rahul Gupta s/o Shri Parkash Gupta, r/o Village Mohalla Dharog, P.O. Chamba, Tehsil and District Chamba . . .Petitioner.

Versus

1. The Himachal Pradesh Housing and Urban Development Authority through its Chief Executive Officer, SDA Complex, Shimla.

2. The Executive Engineer (E), HIMUDA, Electrical Division, Hamirpur, District Hamirpur, H.P. . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Dharam Malhotra, Ld. Adv.

For the respondent(s) : Sh. Kapil Bhushan, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

“Whether alleged termination of services of Shri Rahul Gupta S/O Shri Parkash Gupta, R/O Village Mohalla Dharog, P.O. Chamba, Tehsil and District Chamba, H.P. during October, 2007 by (1) The Himachal Pradesh Housing and Urban Development Authority through its Chief Executive Officer, SDA Complex, Shimla (2) The Executive Engineer (E), HIMUDA, Electrical Division, Hamirpur, District Hamirpur, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/managements?”

2. The case of the petitioner as made out from the claim is that he was engaged as beldar w.e.f. 28.3.2005 in Electrical Sub Division Chamba under respondent no.2 and he worked at various places but his services were verbally disengaged in October, 2007 by respondent no.2. The petitioner felt aggrieved and in June 2008 raised demand by serving demand notice upon respondent no.2. The matter was dealt with by Labour Officer-*cum*-Conciliation Officer, Chamba and when the conciliation failed, he submitted report to the appropriate Government but the reference was refused on the ground that the petitioner had not worked for minimum 240 days, and secondly, his claim was suffering from delay and laches. The petitioner had to collect relevant information under RTI and thereafter he approached the Hon'ble High Court of Himachal Pradesh by way of Civil Writ Petition No.316/2017 and the writ petition was allowed by the Hon'ble Court and the Labour Commissioner was directed to refer the matter for adjudication. As per the petitioner, he had completed 240 days before his verbal disengagement and the respondent had retained the juniors who were favorite to its officers and at the same time fresh hands were engaged after his termination. On the aforesaid facts and circumstances, the petitioner has prayed for his reinstatement with all the consequential benefits.

3. The respondents have resisted and contested the petition and taken up the plea that the petitioner had never completed 240 days in a calendar year and therefore, no right had accrued in his favour. As per the respondents, the petitioner has worked for 141 days in 2005, 126 days in 2006 and 148 days in 2007 and thus the provisions of Section 25-F of the Act was not attracted at all, hence he had no case for his reinstatement. Other allegations are specifically denied and it is submitted that the petitioner has no case for his reinstatement and he is not entitled for other consequential benefits.

4. The petitioner filed the rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. He clarified that he remained ill w.e.f. 26.4.2007 to 25.5.2007 and he was treated by the Medical Department. He further submitted that a medical certificate was issued by Dr. Vishal Mahajan, Medical Officer, Regional Hospital Chamba which shows that

petitioner was not able to work during aforesaid period, and therefore, the aforesaid period was liable to be counted towards his working days and seniority and in this manner he had completed more than 240 days before his illegal retrenchment. It is submitted that the petition be allowed.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 07.03.2019:—

1. Whether termination of services of petitioner by the respondents during October, 2007 is/was illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR*.
4. Whether the petitioner has no locus standi to file the present case, as alleged? . . .*OPR*.
5. Whether the petition is bad for non-joinder and mis-joinder of parties, as alleged? . . .*OPR*.
6. Whether the petitioner has not approached the Tribunal with clean hands and has suppressed the true and material facts, as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Issue No.4	: No
Issue No.5	: No
Issue No.6	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs.3,00,000/-per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.3

8. I will take up with the issue no.3 firstly for disposal since the petitioner has filed the claim petition in support of the reference i.e. maintainability there is no reasonable ground to that the petition is not maintainable, hence this issue is held against the respondents.

ISSUE No.4

9. Since the services of the petitioner are claimed to have been terminated without following the process of law he therefore has locus standi to file the claim in support of the reference received from the appropriate Government on his demand notice. This issue is also held against the respondents.

ISSUES No. 5

10. No evidence has been led on the record to show that as to which party has wrongly been joined or not joined by the petitioner. The full-fledged conciliation has taken place before Conciliation Officer and no objection was raised by the respondents regarding non-joinder and mis-joinder of necessary parties at that time. When the present records are carefully examined, it is clear that no other person than the already joined becomes a necessary party for the purpose of this claim, therefore, this issue is also held against the respondents.

ISSUES No.1 and 6

11. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

12. The mandays chart of the petitioner is not in dispute and it has been tendered on record as Ext. PW1/C. The petitioner has worked till 25.9.2007 and it is for this court to count the number of working days in reverse order for preceding 12 calendar months. Since the Industrial disputes Act is a beneficial piece of legislation, therefore, every provision of the same has to be liberally interpreted so as to protect the interest of the workman. The respondents have shown the working months of the petitioner starting from the date 26th of every month and ending on 25th date of every month. Since the statute provides 12 preceding calendar months, therefore, the court has to take into account the complete calendar month to compute 12 preceding calendar months for the purpose of this case. Since the services of the petitioner were terminated on 25.09.2007, therefore the month of September 2007 has to be treated as whole month to compute preceding 12 months in order to calculate the number of the working days of the petitioner prior to his termination. In this manner preceding twelve calendar months end in October 2006. The month of October 2006 has also be taken as full month for this purpose as the month can not be started from 26th date as has been done by the respondent while preparing the mandays chart. The petitioner has worked for full month in october 2006.

13. In the aforesaid background, the petitioner has worked for 25 day in the month of September 2007. In the month of August 2007, the petitioner has worked w.e.f 26-08-2007- to 31-08-2007 for 06 days. In the month of July 2007, the petitioner has worked till 25.07.2007, thus for total 25 days. In the month of June the petitioner has worked for full 30 days. In the month of May the petitioner has worked for 26-05-2007 to 31-05-2007 full 06 days. In the Month of April, the petitioner has worked from 1st April to 25th April for 25 days. In the month of March 2007, the petitioner has worked w.e.f 26.03.2007 to 31.03.2007 for 06 days. In the month of February, the petitioner has not worked even for a single day. In the month of January 2007, the petitioner has worked for 25 days only.

14. In the month of December 2006, the petitioner has worked for six days only. In the month of November 2006, the petitioner worked till 25.11.2006 thus for 25 days. In the month of October 2006, the petitioner has worked for full month i.e. for 31 days. Thus the working days can be tabulated as under:—

September 2007	25 days
August 2007	06 days

July 2007	25 days
June 2007	30 days
May 2007	06 days
April 2007	25 days
March 2007	06 days
February 2007	Nil
January 2007	25 days
December 2006	06 days
November 2006	25 days
October 2006	31 days
12 Calendar Month	210 days

15. The petitioner has come up with the case that he remained ill in between 26-04-2007 to 25-5-2007 and the Medical Certificate to this effect was submitted by him to the respondent, hence, this period of 30 days be counted towards the working days. This plea was taken up by him first line in the rejoinder and not in the claim petition. In the claim petition, the petitioner has submitted that he had completed 240 working days preceding his termination and therefore, non-compliance of Section 25-F of the Act was made out in this case. When the respondents filed reply it was submitted that the petitioner had not completed 240 working days preceding his termination therefore, Section 25-F of the Act was not attracted. In order to explain this position, the petitioner explained in the rejoinder that since he remained ill for 30 days and submitted the medical certificate to this effect to the respondent, therefore, the period of 30 days was liable to be counted towards his working days. In this manner, the petitioner has not committed any error by making reference of this medical certificate in the rejoinder for the first time. The petitioner was initially coming up with the case he had completed 240 working days before his termination and need to explained this situation arose only with the respondent denied the plea.

16. As per Section 25-B of the Act a workman shall be said to be continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Thus the statute takes care of those interruption in service which are caused by the reasons beyond the control of the workman. The ailment of the workman is also a situation which is beyond the control of the workman. In case the Doctor advises the workman to take complete rest from work on account of such ailment, such interruption in the continuous service of such a workman has to be counted towards his working days. Moreover, this is a beneficial piece of legislation and the court has to be interpreted the facts in favour of the workman rather than the employer.

17. The next question that arises for consideration is whether the petitioner has been able to establish that he was ill for a period of 30 days commencing from 26-4-2007 to 25-5-2007? The petitioner has not only pleaded the factum of his illness but he has sworn his detailed affidavit Ex. PW1/A in which he has specifically stated about his illness and submission of the medical certificate/ fitness to the department. The copy of the medical certificate has been tendered by him in his examination in chief as Ext. PW1/B. The petitioner was though subjected to cross-examination but not even a single question was put to him to challenge the plea of illness as taken by him. When a fact spoken on oath by a witness is not challenge by way of cross-examination, the presumption goes that adversary party accepts the truthfulness of the same. The petitioner could have been subjected to searching cross-examination of these aspect and medical certificate could

have been assailed. No such exercise was undertaken by the learned counsel appearing for the respondent. Neither the medical certificate was assailed by way of cross-examination nor it is the case of the respondent that such certificate was never submitted to the department by the petitioner. Thus statement of the petitioner went absolutely, un rebutted and unchallenged and there is no reason to disbelieve the same. The respondents had one more opportunity to assail the medical certificate and the factum of the illness of the petitioner by leading evidence on their turn. The respondents have examined Sh. Sunny as RW1/A and Smt. Rajni Duggal as RW2/A in the witness box. The affidavit of Sh. Sunny is RW1/A and affidavit of Smt. Smt. Rajni Duggal is Ext. RW2/A. When both these affidavits are carefully examined, it becomes clear that there is no whisper of the fact that the petitioner has raised the plea of his ailment falsely in order to get the benefit of 30 days. There is not even a whisper of the fact that in such medical certificate was never produced by the petitioner to the department before his joining. Thus the respondents have again missed the train by not speaking anything about the medical certificate produced by the petitioner. Sh. Sunny was subjected to cross-examination wherein he pleaded ignorance to the suggestion that the petitioner had submitted his medical certificate showing his inability to work w.e.f. 26-4-2007 to 25-5-2007. Similarly plea of ignorance was taken by Smt. Rajni Duggal when she was subjected to cross-examination of this point. Thus the respondent chose to examining those witnesses before this Court who are not even conversant with the fact of the case. Instead of admitting or denying the suggestion, they pleaded ignorance to the same. Therefore, the respondents have failed to meet the case of the petitioner regarding the medical leave for 30 days. Copy of medical certificate tendered on the record proves that the petitioner remained ill for 30 days and could not work. He was issued fitness by the medical officer after 30 days rest. The respondents have thus failed to meet the case of the petitioner and the petitioner has been able to prove that during the period of preceding 12 calendar months he remained ill for 30 days and was advised by the Doctor to take complete rest and for this reason he could not work. The petitioner has been able to prove that on the date of his joining he had submitted the medical certificate to the respondents. Since the respondents have not said any thing about the medical certificate, the presumption goes that the medical certificate was accepted by the respondent and the petitioner worked thereafter till the date of his termination. This interruption of the work of the petitioner for period of 30 days which has occurred on account of his illness and for the reason beyond the control, has to be counted towards the number of working days, and therefore, he is entitled for the benefit of the same. This period of 30 days has to be added in the 210 days for which the petitioner had actual worked in the preceding of 12 calendar months of his termination. Thus the petitioner has been able to prove he has worked for 240 days and only thereafter his services were terminated orally by the respondent. Once the petitioner has been able to prove that he has worked for minimum 240 days, therefore, the termination of his services by way of verbal order is against the provision contained in 25-F of the Act. In this situation, his services could not have been terminated without complying with the Provisions contained under Section 25-F of the Act.

18. Otherwise also, in case the workman has worked for more than 230 days and his services are terminated, for instance, 10 days before he completes minimum 240 working days, even then the prudence requires that the respondent is asked to show the bonafide and genuine reasons for such termination. Terminating the services of the petitioner all of sudden by way of verbal order is an act of malafide in order to prevent the workman to complete 240 days minimum working days in order to claim the benefit of Section 25-F of the Act, and such an act amounts to unfair labour practice. Such a workman is entitled for the benefit under Section 25-F of the Act when his services are terminated at the juncture when he is likely to complete 240 days work within 5 to 10 days. In the case in hand, the termination of the services of the petitioner by way of verbal is act of malafide on the face of it. The respondents are not a private individuals but are the Authorities and engagement of the workmen in such authorities is done after proper documentary. In case, there is a requirement of workmen in any public body, a complete documentation takes place regarding such a requirement and only then the workforce is arranged. When the services of

a particular workman are not required again the reasons are documented and those reasons should be bonafide and genuine. In this case, no such document is placed on the record to show as to how the work being done by the the petitioner ceased to exist suddenly on 25-9-2007 compelling the respondents to terminate the services of the petitioner by way of verbally order. Verbal orders of any officer of the authority will not serve the purpose as such orders lack the reasons which the court could examine during litigation. Termination of the services in such a manner is in itself an instance of unfair labour practice.

19. Thus for all the reasons mentioned hereinabove, it is held that the services of the petitioner were terminated as a result of unfair labour practices and he had completed 240 days at that time in the preceding twelve calendar months. In such a situation the compliance of Section 25-F of the Act was mandatory.

20. The petitioner has come up with the plea that the respondent has retained the juniors at his cost and after his termination fresh hands have also been engaged without giving priority to him. The petitioner has although made a statement to this effect that the respondents have retained workmen junior to him and have also fresh hands, but no such names have been revealed by him. It was not difficult for him as he must be acquainted with the junior workmen working with him. Since he has not named any such junior, the presumption goes that no such junior was retained by the respondent. The petitioner has not explained as to when the fresh hands were engaged by the respondents. The respondents have come up with the specific case that neither any junior was retained nor any fresh hand was engaged as alleged by the petitioner. The petitioner has not got the record of the respondent requisitioned to this effect during the evidence. He has not examined any other witness who could support his case on this aspect. In the absence of any cogent and convenient material on the record to this effect, the petitioner has failed to prove the violation of Section 25-G and 25-H of the Act. He has, however succeeded to prove that the respondents have violated the provision contained in section 25 F of the Act.

21. It is settled law by now that when there is violation of Section 25-F alone, reinstatement is not the rule. In such situation the compensation is the rule. The reason is simple. In case the court orders reinstatement of a workman whose services have been disengaged in violation of Section 25-F of the Act, the employer is again at liberty to disengage his services after paying him compensation. In such situation the order of the court is frustrated. Thus when there is no violation of Sections 25-G and 25-H of the Act but the violation of Section 25-F alone, the relief the court can grant is that of payment of compensation and not reinstatement.

22. Taking into account the facts and circumstances of this case coupled with the fact that the petitioner was subjected to unfair labour practice by the respondents the ends of the justice shall be met in case the petitioner is held entitled to seek compensation to the tune of Rs.3,00,000/- (Rupees Three Lakh Only) from the respondents. Issues no. 1 and 6 are therefore decided accordingly.

ISSUE No. 2

23. In view of the aforesaid discussions, the petitioner is held entitled to ₹3,00,000/- (Rupees Three Lakh Only) in lieu of reinstatement and other consequential benefits. This issue is also decided accordingly.

RELIEF

24. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act alone in this case, and therefore, the relief of reinstatement and

other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹3,00,000/- (Rupees Three lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

25. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 31st day of December, 2022.

Sd/-

(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 10th April, 2023

No. HPERC-F(1)-3/2018.—WHEREAS section 61 of the Electricity Act, 2003 (36 of 2003), provides that the Appropriate Commission shall specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to Transmission Licensee(s) and also by the National Tariff Policy formulated under the said Act;

AND WHEREAS the Himachal Pradesh Electricity Regulatory Commission has framed the HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 published in the Rajpatra, Himachal Pradesh, dated 2nd April, 2011 as amended from time to time (hereinafter referred as “Tariff Regulations, 2011” or “the said Regulations”);

AND WHEREAS Para 5.3 of the National Tariff Policy states that development of Intra-State Transmission System shall be executed through competitive bidding route provided for the projects costing above a Threshold Limit, which shall be decided by the State Commission;

AND WHEREAS in pursuance to Clause 5.3 of the Tariff Policy, 2016 and all other powers enabling it in this behalf, the Commission, after following the due process of prior publication, has notified the threshold limit of Rs. 45 Crore on 21st May, 2022;

AND WHEREAS this necessitates the Commission to amend its Tariff Regulations, 2011 to incorporate the provisions pertaining to threshold limit of Rs. 45 Crore (Rupees Forty Five Crore) notified by the Commission for development of *Intra-State* Transmission System to be executed through competitive bidding route;

NOW, THEREFORE, in exercise of the powers conferred under sub-section (1) of Section 61, sub-section (1) of Section 62, Clauses (a) and (e) of sub-section (1) of Section 86 and Clause (zd), (ze) and (zf) of sub-section (2) of Section 181, of the Electricity Act, 2003 (36 of 2003), read with Section 21 of the General Clauses Act, 1897 (10 of 1897), and all other powers enabling it in this behalf, the Commission proposes to amend the HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 and as required by Sub-section (3) of Section 181 of the said Act and Rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, the draft amendment Regulations are hereby published for the information of all the persons likely to be affected thereby; and notice is hereby given that the said draft amendment Regulations will be taken into consideration after the expiry of thirty (30) days from the date of publication of this notification in the Rajpatra, Himachal Pradesh, together with any objections or suggestions which may within the aforesaid period be received in respect thereto.

The text of the aforesaid draft amendment is available on the website of the Commission i.e. <http://www.hperc.org>.

The objections or suggestions in this behalf should be addressed to the Secretary, Himachal Pradesh Electricity Regulatory Commission, Vidyut Aayog Bhawan, Block-37, SDA Complex, Kasumpti-171009 (HP) so as to reach before the Commission on or before 18-05-2023.

DRAFT REGULATIONS

1. Short title and commencement.—(1) These Regulations may be called the Himachal Pradesh Electricity Regulatory Commission HPERC (Terms and Conditions for Determination of Transmission Tariff) (Third Amendment) Regulations, 2023.

(2) These Regulations shall be deemed to have come into force from 21st May, 2022.

2. Amendment of Regulation 2.—Sub-Regulation (2) of Regulation 3 of the said Regulations, shall be substituted with the following, namely:—

“(2) Where tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government, the Commission shall adopt such tariff in accordance with the provisions of the Act:

Provided that all *Intra-State* Transmission Projects *i.e.* Transmission Line or sub-station or both Transmission Line and sub-station as a package (where the proposed Transmission Line is associated with the proposed sub-station) above the threshold limit of Rs. 45 Crore (Rupees Forty Five Crore) shall be developed through Tariff Based Competitive Bidding (TBCB) in accordance with the guidelines issued by the State Government:

Provided further that in case the State Government/ Transmission Licensee intends to develop any Intra-State Transmission Project above the threshold limit through cost plus approach due to some specific reasons, the State Government/ Transmission Licensee shall obtain prior approval of the Commission for the same.”

By order of the Commission,

Sd/-
(CHHAVI NANTA), HPAS,
Secretary.

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील सदर चम्बा, जिला चम्बा (हि0प्र0)

मिसल नम्बर : तहसील /रीडर/ 2023

तारीख पेशी : 13-4-2023

ज्ञान चन्द पुत्र नेत्र, निवासी गांव मल्ला, परगना पंजला, तहसील व जिला चम्बा (हि0प्र0)

बनाम

साधारण आम जनता

विषय.—कागजात माल में प्रार्थी का नाम दुरुस्त करने बारा।

प्रार्थी ज्ञान चन्द पुत्र नेत्र, निवासी गांव मल्ला, परगना पंजला, तहसील व जिला चम्बा (हि0प्र0) ने इस कार्यालय में आवेदन किया है कि उसका नाम उसके आधार कार्ड, उसके लड़के के स्कूल प्रमाण-पत्र में ज्ञान चन्द दर्ज है जोकि सही व दुरुस्त है। परन्तु तहसील चम्बा के पटवार सर्कल मांडू के महाल अगाहर के राजस्व अभिलेख में उसका नाम ज्ञानू दर्ज कागजात माल है, जोकि गलत है तथा प्रार्थना की है कि उसका नाम तहसील चम्बा के पटवार सर्कल मांडू के महाल अगाहर के राजस्व अभिलेख में ज्ञानू की बजाये ज्ञान चन्द दुरुस्त करने के आदेश पारित करें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि ज्ञान चन्द पुत्र नेत्र, निवासी गांव मल्ला, परगना पंजला, तहसील व जिला चम्बा के नाम को दुरुस्त करने बारा आम जनता को कोई आपत्ति हो तो वह दिनांक 13-04-2023 सुबह 10.00 बजे मेरे न्यायालय में हाजिर आकर अपने-अपने उजर व एतराज पेश कर सकते हैं। अन्यथा हाजिर न आने की सूरत में प्रार्थी के नाम को दुरुस्त दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 14-03-2023 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
सदर चम्बा, जिला चम्बा (हि0प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी एवं तहसीलदार, तहसील सदर चम्बा,
जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : तहसील /रीडर/ 2023

तारीख पेशी : 29-04-2023

गीता पत्नी अमरो, निवासी मुहल्ला/गांव वैली, डा0 रजेरा, परगना पंजला, तहसील व जिला चम्बा,
हिमाचल प्रदेश।

बनाम

आम जनता एवं ग्राम पंचायत वैली, विकास खण्ड मैहला

विषय.—जन्म/मृत्यु सम्बन्धित पंजीकरण बारा।

इस अदालत में उप-मण्डलाधिकारी (ना0) चम्बा के कार्यालय पृष्ठांकन संख्या-1237 दिनांक 28-03-2023 के माध्यम से प्राप्त दस्तावेज क्रमशः (1) जिला पंजीकरण (जन्म एवं मृत्यु) मुख्य चिकित्सा अधिकारी चम्बा के कार्यालय पत्र संख्या HFW-B&D/CMO-CBA/2022/5114, दिनांक 28-03-2023, (2) शपथ-पत्र, (3) अप्राप्यता प्रमाण-पत्र, जिसमें प्रार्थिया गीता देवी पुत्री अमरो, निवासी मुहल्ला/गांव वैली, डा0 रजेरा, परगना पंजला, तहसील व जिला चम्बा, हिमाचल प्रदेश की जन्म तिथि 16-08-1984 किन्हीं कारणों से ग्राम पंचायत वैली, विकास खण्ड मैहला के कार्यालय अभिलेख में दर्ज न हुई है। जो नियमानुसार दर्ज होना अनिवार्य है इसलिए आवेदिका ने अनुरोध किया है कि उसकी जन्म तिथि को ग्राम पंचायत वैली, विकास खण्ड मैहला के कार्यालय अभिलेख में दर्ज/पंजीकृत किया जाये।

अतः सर्वसाधारण जनता को इस इशतहार द्वारा सूचित किया जाता है कि प्रार्थिया गीता देवी पुत्री अमरो, निवासी मुहल्ला/गांव वैली, डा0 रजेरा, परगना पंजला, तहसील व जिला चम्बा की जन्म तिथि 16-08-1984 ग्राम पंचायत वैली, विकास खण्ड मैहला के कार्यालय के जन्म/मृत्यु अभिलेख में दर्ज/पंजीकृत करने बारा अगर किसी को आपत्ति हो तो वह असातन या वकालतन अपनी आपत्ति इस अदालत में इशतहार के प्रकाशन के एक माह के भीतर-भीतर सुबह 10.00 से सायं 5.00 बजे तक दर्ज करवा सकता है। निर्धारित अवधि में आपत्ति न आने की सूरत में प्रार्थिया की जन्म तिथि को दर्ज करने के आदेश सम्बन्धित स्थानीय रजिस्ट्रार, जन्म एवं मृत्यु को पारित कर दिए जाएंगे।

आज दिनांक 29-03-2023 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील सदर चम्बा, जिला चम्बा (हि0प्र0)।

ब अदालत श्री सीता राम, नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील तेलका,
जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 12 ना0 तह0 वाचक उप-तहसील तेलका/2022 170-71

तारीख दायरा : 18-03-2023

उर्मिला गुप्ता पत्नी श्री भूषण कुमार गुप्ता, मोहल्ला बनगोटू, तहसील व जिला चम्बा, हिमाचल प्रदेश
वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना-पत्र।

उर्मिला गुप्ता पत्नी श्री भूषण कुमार गुप्ता, मोहल्ला बनगोटू, तहसील व जिला चम्बा ने इस अदालत में एक आवेदन-पत्र व ब्यान हल्फी पेश किया है कि मेरा नाम परिवार रजिस्टर नकल, आधार कार्ड, राशन कार्ड में उर्मिला गुप्ता दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल धनेल, पटवार वृत्त सालवा, उप-तहसील तेलका में मेरा नाम अच्छरी दर्ज है जो कि गलत है।

अतः प्रार्थिया का ब्यान हल्फी स्वीकार करते हुए इस इशतहार/मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिन के नाम का इन्द्राज करने बारा किसी

प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थिन का नाम अच्छरी की बजाए अच्छरी उर्फ उर्मिला गुप्ता दर्ज करने के आदेश पटवारी, पटवार वृत्त सालवा को पारित कर दिए जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील तेलका, जिला चम्बा (हि0प्र0)।

ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील पुखरी,
जिला चम्बा, हिमाचल प्रदेश

मिसल नं0 : 19/2022 ना0 तह0 वाचक उप-तहसील पुखरी/2023

तारीख दायरा : 20-07-2022

अन्जु ठाकुर पुत्री श्री धर्म सिंह, गांव लड़ोग, परगना त्रयोदी, जिला चम्बा, हिमाचल प्रदेश

वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना-पत्र।

अन्जु ठाकुर पुत्री श्री धर्म सिंह, गांव लड़ोग, परगना त्रयोदी, उप-तहसील पुखरी जिला चम्बा (हि0प्र0) ने एक आवेदन-पत्र व ब्यान हल्फी पेश किया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, राशन कार्ड, पैन कार्ड में अन्जु ठाकुर पुत्री श्री धर्म सिंह दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल व पटवार वृत्त चकलू उप-तहसील पुखरी में मेरा नाम आशा देवी पुत्री श्री धर्म सिंह दर्ज है जो कि गलत है।

अतः प्रार्थिन का ब्यान हल्फी स्वीकार करते हुए इस इश्तहार/मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिन के नाम का इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थिन का नाम आशा देवी पुत्री श्री धर्म सिंह की बजाए आशा देवी उर्फ अन्जु ठाकुर पुत्री श्री धर्म सिंह दर्ज करने के आदेश पटवारी, पटवार वृत्त चकलू को पारित कर दिए जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील पुखरी, जिला चम्बा (हि0प्र0)।

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील पुखरी,
जिला चम्बा, हिमाचल प्रदेश**

मिसल नं० : 28/2022 ना० तह० वाचक उप-तहसील पुखरी/2023

तारीख दायरा : 19-12-2022

चम्पा देवी पत्नी स्व० श्री चमारू उर्फ अमन कुमार, गांव साल, परगना त्रयोदी, जिला चम्बा, हिमाचल प्रदेश वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना-पत्र।

चम्पा देवी पत्नी स्व० श्री चमारू उर्फ अमन कुमार, गांव साल, परगना त्रयोदी, जिला चम्बा, (हि०प्र०) ने एक आवेदन-पत्र व ब्यान हल्फी पेश किया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, पैन कार्ड, बैंक पास बुक में चम्पा देवी पत्नी स्व० श्री चमारू उर्फ अमन कुमार दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल साल, पटवार वृत्त चकलू, उप-तहसील पुखरी में मेरा नाम चम्पो देवी पत्नी स्व० श्री चमारू उर्फ अमन कुमार दर्ज है जो कि गलत है।

अतः प्रार्थिन का ब्यान हल्फी स्वीकार करते हुए इस इश्तहार/मुस्त्री मुनादी व चम्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिन के नाम का इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थिन का नाम चम्पो देवी की जगह चम्पा देवी पत्नी स्व० श्री चमारू उर्फ अमन कुमार दर्ज करने के आदेश पटवारी, पटवार वृत्त चकलू को पारित कर दिए जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील पुखरी, जिला चम्बा (हि०प्र०)।

**ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील पुखरी,
जिला चम्बा, हिमाचल प्रदेश**

मिसल नं० : 25/2022 ना० तह० वाचक उप-तहसील पुखरी/2023

तारीख दायरा : 22-11-2022

तेज सिंह पुत्र श्री दलीपो, गांव साहलूई, परगना राजनगर, जिला चम्बा, हिमाचल प्रदेश वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना—पत्र।

तेज सिंह पुत्र श्री दलीपो, गांव साहलूँई, परगना राजनगर, उप—तहसील पुखरी, जिला चम्बा, (हि0प्र0) ने एक आवेदन—पत्र व ब्यान हल्फी पेश किया है कि मेरे पिता का नाम आधार कार्ड, परिवार रजिस्टर नकल, वोटर कार्ड, शिक्षा प्रमाण—पत्र में श्री दलीपो दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल नन्दलेरा, पटवार वृत्त तौसा, उप—तहसील पुखरी में मेरे पिता का नाम दलीप सिंह पुत्र श्री माधो दर्ज है जो कि गलत है।

अतः प्रार्थी का ब्यान हल्फी स्वीकार करते हुए इस इश्तहार/मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के पिता का नाम इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थी के पिता का नाम दलीप सिंह पुत्र श्री माधो की जगह दलीपो पुत्र श्री माधो दर्ज करने के आदेश पटवारी, पटवार वृत्त तौसा को पारित कर दिए जाएंगे।

यह इश्तहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप—तहसील पुखरी, जिला चम्बा (हि0प्र0)।

ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप—तहसील पुखरी,
जिला चम्बा, हिमाचल प्रदेश

मिसल नं० : 23/2022 ना० तह० वाचक उप—तहसील पुखरी/2023

तारीख दायरा : 10-10-2022

बिशन सिंह पुत्र श्री चैनो, गांव भटोट, परगना त्रयोदी, जिला चम्बा, हिमाचल प्रदेश

वादी।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना—पत्र।

बिशन सिंह पुत्र श्री चैनो, गांव भटोट, परगना त्रयोदी, उप—तहसील पुखरी, जिला चम्बा, (हि0प्र0) ने एक आवेदन—पत्र व ब्यान हल्फी पेश किया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, राशन कार्ड में बिशन सिंह पुत्र श्री चैनो दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल व पटवार वृत्त चकलू, उप—तहसील पुखरी में मेरा नाम विशनू पुत्र श्री चैनो दर्ज है जो कि गलत है।

अतः प्रार्थी का ब्यान हल्फी स्वीकार करते हुए इस इश्तहार/मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के नाम का इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इश्तहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं

एतराज नहीं सुना जाएगा व उक्त प्रार्थी का नाम विशनू पुत्र श्री चैनों की जगह विशनू उर्फ बिशन सिंह पुत्र श्री चैनों दर्ज करने के आदेश पटवारी, पटवार वृत्त चकलू को पारित कर दिए जाएंगे।

यह इशतहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील पुखरी, जिला चम्बा (हि0प्र0)।

ब अदालत नायब तहसीलदार व कार्यकारी दण्डाधिकारी, उप-तहसील पुखरी,
जिला चम्बा, हिमाचल प्रदेश

मिसल नं० : 21/2022 ना० तह० वाचक उप-तहसील पुखरी/2023/

तारीख दायरा : 03-10-2022

सुनील कुमारी पुत्री स्व० श्री केहर सिंह, गांव धुंवार, परगना राजनगर, जिला चम्बा, हिमाचल प्रदेश
वादिया।

बनाम

आम जनता

प्रतिवादी।

विषय.—राजस्व कागजात माल में नाम दुरुस्ती करने बारे प्रार्थना-पत्र।

सुनील कुमारी पुत्री स्व० श्री केहर सिंह, गांव धुंवार, परगना राजनगर, उप-तहसील पुखरी, जिला चम्बा (हि०प्र०) ने एक आवेदन-पत्र व ब्यान हल्फी पेश किया है कि मेरा नाम आधार कार्ड, परिवार रजिस्टर नकल, पैन कार्ड, शिक्षा प्रमाण-पत्र में सुनील कुमारी पुत्री स्व० श्री केहर सिंह दर्ज है जो बिल्कुल सही व दुरुस्त है परन्तु राजस्व अभिलेख महाल व पटवार वृत्त राजनगर, उप-तहसील पुखरी में मेरा नाम कुमारी नीलू पुत्री श्री केहर सिंह दर्ज है जो कि गलत है।

अतः प्रार्थिन का ब्यान हल्फी स्वीकार करते हुए इस इशतहार/मुस्त्री मुनादी व चस्पांगी द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थिन के नाम का इन्द्राज करने बारा किसी प्रकार का कोई उजर एवं एतराज हो तो वह असालतन व वकालतन इस इशतहार के प्रकाशन की तिथि उपरान्त एक माह के भीतर अपना उजर एवं एतराज पेश कर सकते हैं। बाद तारीख किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व उक्त प्रार्थिन का नाम कुमारी नीलू पुत्री श्री केहर सिंह की जगह कुमारी नीलू उर्फ सुनील कुमारी पुत्री स्व० श्री केहर सिंह दर्ज करने के आदेश पटवारी, पटवार वृत्त राजनगर को पारित कर दिए जाएंगे।

यह इशतहार हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील पुखरी, जिला चम्बा (हि०प्र०)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, सैज, जिला कुल्लू, हिमाचल प्रदेश

मिसल नं० : 13 / 2023

आगामी पेशी : 13-04-2023

एलू राम पुत्र स्व० श्री डोला राम, निवासी गांव कलियाह, डाकघर शलवाड, तहसील सैज, जिला कुल्लू (हि०प्र०) प्रार्थी।

बनाम

आम जनता

विषय.—आवेदन पत्र जेर धारा 37(2) भू-राजस्व अधिनियम, 1954 के अन्तर्गत भू-राजस्व अभिलेख में नाम दुरुस्ती करने बारे।

एलू राम पुत्र स्व० श्री डोला राम, निवासी गांव कलियाह, डाकघर शलवाड, तहसील सैज, जिला कुल्लू (हि०प्र०) ने इस अदालत में एक दरखास्त गुजारी है कि राजस्व रिकार्ड महाल धाऊगी कोठी बूंगा, तहसील सैज, जिला कुल्लू में इसका नाम एल राम दर्ज है। जबकि ग्राम पंचायत कनौन के परिवार रजिस्टर भाग-1 व अन्य दस्तावेजों में इसका नाम एलू राम दर्ज है। जिसकी दुरुस्ती बारे एक शपथ-पत्र भी प्रार्थी द्वारा प्रस्तुत किया गया है। इसका नाम राजस्व रिकार्ड महाल धाऊगी कोठी बूंगा, तहसील सैज, जिला कुल्लू में एल राम के स्थान पर एल राम उर्फ एलू राम दर्ज किए जाने की प्रार्थना की है।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे में कोई एतराज हो तो दिनांक 13-04-2023 को अदालतन या वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है। अन्यथा इसका इन्द्राज राजस्व रिकार्ड महाल धाऊगी कोठी बूंगा, तहसील सैज, जिला कुल्लू के रिकॉर्ड में करवा दिया जाएगा।

आज दिनांक 14-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
सैज, जिला कुल्लू (हि० प्र०)।

**ब अदालत उप-मण्डल दण्डाधिकारी एवं विवाह पंजीकरण अधिकारी, बन्जार,
जिला कुल्लू, हिमाचल प्रदेश**

मुकद्दमा नं० : 09 / 2023

दिनांक : 18-03-2023

1. श्री टेक राम पुत्र श्री भगत राम, गांव श्रेढा, डाकघर अनाह, तहसील बन्जार, जिला कुल्लू (हि०प्र०)।

2. श्रीमती पार्वती देवी पुत्री श्री लोत राम, गांव लाहूण्ड, डाकघर व तहसील बन्जार, जिला कुल्लू (हि०प्र०) प्रार्थीगण।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थीगण ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि प्रार्थीगण ने दिनांक 20-05-2019 को अपनी शादी हसब रिवाज मुल्क व कौम से कर ली है। वे इस शादी का इन्द्राज गलती से कहीं दर्ज नहीं करवा सके हैं और अब वे अपनी शादी का इन्द्राज ग्राम पंचायत श्रीकोट, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करवाना चाहते हैं।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थीगण श्री टेक राम व श्रीमती पार्वती देवी की शादी का इन्द्राज ग्राम पंचायत श्रीकोट, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 17-04-2023 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करें। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत शादी की तिथि 20-05-2019 का इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 18-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
उप-मण्डल दण्डाधिकारी एवं
विवाह पंजीकरण अधिकारी,
बन्जार, जिला कुल्लू (हि0प्र0)।

ब अदालत उप-मण्डल दण्डाधिकारी एवं विवाह पंजीकरण अधिकारी, बन्जार,
जिला कुल्लू, हिमाचल प्रदेश

मुकद्दमा नं0 : 08 / 2023

दिनांक : 16-03-2023

1. श्री राजेन्द्र पाल पुत्र श्री कृष्ण गोपाल, गांव हिडब, डाकघर सोझा, तहसील बन्जार, जिला कुल्लू, (हि0प्र0)।

2. श्रीमती मुस्कान ठाकुर पुत्री श्री मिलाप चन्द, गांव जटेहड़, डाकघर कमन्द, तहसील आनी, जिला कुल्लू, (हि0प्र0) प्रार्थीगण।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थीगण ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि प्रार्थीगण ने दिनांक 20-05-2021 को अपनी शादी हसब रिवाज मुल्क व कौम से कर ली है। वे इस शादी का इन्द्राज गलती से कहीं दर्ज नहीं करवा सके हैं और अब वे अपनी शादी का इन्द्राज ग्राम पंचायत सजवाड़, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करवाना चाहते हैं।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थीगण श्री राजेन्द्र पाल व श्रीमती मुस्कान ठाकुर की शादी का इन्द्राज ग्राम पंचायत सजवाड़, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 17-04-2023 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करें। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न

होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत शादी की तिथि 25-05-2021 का इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 16-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
उप-मण्डल दण्डाधिकारी एवं
विवाह पंजीकरण अधिकारी,
बन्जार, जिला कुल्लू (हि0प्र0)।

ब अदालत उप-मण्डल दण्डाधिकारी एवं विवाह पंजीकरण अधिकारी, बन्जार,
जिला कुल्लू, हिमाचल प्रदेश

मुकद्दमा नं० : 08/2023

दिनांक : 15-03-2023

1. श्री वीर सिंह पुत्र श्री सागर दास, गांव चिपनी, डाकघर बठाहड़, तहसील बन्जार, जिला कुल्लू, (हि0प्र0)।

2. श्रीमती रंजना देवी पुत्री श्री जिया लाल, गांव मढ़ेल, डाकघर दलाश, तहसील आनी, जिला कुल्लू, (हि0प्र0) प्रार्थीगण।

बनाम

आम जनता

प्रत्यार्थीगण।

प्रार्थीगण ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हलफिया इस आशय से गुजारा है कि प्रार्थीगण ने दिनांक 04-02-2019 को अपनी शादी हसब रिवाज मुल्क व कौम से कर ली है। वे इस शादी का इन्द्राज गलती से कहीं दर्ज नहीं करवा सके हैं और अब वे अपनी शादी का इन्द्राज ग्राम पंचायत तुंग, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करवाना चाहते हैं।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थीगण श्री वीर सिंह व श्रीमती रंजना देवी की शादी का इन्द्राज ग्राम पंचायत तुंग, विकास खण्ड बन्जार, जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 17-04-2023 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करें। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत शादी की तिथि 04-02-2019 का इन्द्राज करने के आदेश पारित किए जाएंगे।

आज दिनांक 16-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
उप-मण्डल दण्डाधिकारी एवं
विवाह पंजीकरण अधिकारी,
बन्जार, जिला कुल्लू (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप तहसील नित्थर, जिला कुल्लू (हि0प्र0)

मिसल नं0 20/2023

दिनांक मरजुआ : 28-02-2023

पेशी दिनांक : 17-04-2023

मुकद्दमा : इन्द्राज सेहत नाम

हेत राम पुत्र भादर चन्द, गांव ढमाह, फाटी व उप-तहसील नित्थर, जिला कुल्लू (हि0प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

प्रार्थना पत्र.—U/S 35 ता 37 हिमाचल प्रदेश भू-राजस्व अधिनियम, 1954 के अन्तर्गत बाबत नाम दुरुस्ती बारे।

हेत राम पुत्र भादर चन्द, गांव ढमाह, फाटी व उप-तहसील नित्थर, जिला कुल्लू (हि0प्र0) ने शपथ पत्र सहित आवेदन किया है कि राजस्व अभिलेख फाटी नित्थर, उप-तहसील नित्थर में प्रार्थी के पिता का नाम बहादुर सिंह दर्ज हो चुका है, जोकि गलत दर्ज हुआ है। प्रार्थी ने बरूये शपथ-पत्र ब्यान किया कि उसके पिता का वास्तविक नाम भादर चन्द है, जिस बारे पंचायत रिकार्ड, पहचान पत्र, आधार कार्ड, बैंक रिकार्ड प्रस्तुत किया है जिसमें प्रार्थी के पिता का नाम भादर चन्द दर्ज है। अब प्रार्थी ने प्रार्थना-पत्र से निवेदन किया है कि राजस्व अभिलेख फाटी नित्थर में बहादुर सिंह के स्थान पर भादर चन्द उर्फ बहादुर सिंह दुरुस्ती करने के आदेश चाहे हैं।

अतः इश्तहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख फाटी नित्थर में बहादुर सिंह के स्थान पर भादर चन्द उर्फ बहादुर सिंह करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी 17-04-2023 को प्रातः 10 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 17-03-2023 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील नित्थर, जिला कुल्लू (हि0प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप तहसील नित्थर, जिला कुल्लू (हि0प्र0)

मिसल नं0 21/2023

दिनांक मरजुआ : 02-03-2023

तारीख फैसला : 17-04-2023

उनवान मुकद्दमा : इन्द्राज सेहत नाम

श्रीमती अलीमा पत्नी श्री मोहम्मद अली, गांव नौणी, डा0 घाटू, उप-तहसील नित्थर, जिला कुल्लू (हि0प्र0) प्रार्थिन।

आम जनता

फरीकदोयम।

प्रार्थना-पत्र जन्म व मृत्यु पंजीकरण जेर धारा 13(3) पंजीकरण अधिनियम, 1969.

श्रीमती अलीमा पत्नी श्री मोहम्मद अली, गांव नौणी, डा0 घाटू, उप-तहसील नित्थर, जिला कुल्लू ने एक आवेदन पत्र जिला रजिस्ट्रार जन्म व मृत्यु एवं मुख्य चिकित्सा अधिकारी कुल्लू, जिला कुल्लू के कार्यालय पत्र संख्या HFW-ST (B&D) Delay Birth & Death-KLU-2023-2254-60 दिनांक 24-02-2023 जो कार्यकारी दण्डाधिकारी उप-तहसील नित्थर को सम्बोधित है इस कार्यालय में प्रस्तुत किया है कि उसके पुत्र सायल जिसका जन्म 22-11-2017 को गांव नौणी, ग्राम पंचायत घाटू, उप-तहसील नित्थर में हुआ है। प्रार्थिन के बेटे का नाम अज्ञानता के कारण ग्राम पंचायत घाटू में दर्ज नहीं किया गया है। शपथ-पत्र, परिवार नकल, रिपोर्ट प्रधान ग्राम पंचायत घाटू व फार्म नं0 10 संलग्न है। अब प्रार्थिन ने अपने बेटे का नाम ग्राम पंचायत घाटू में दर्ज करने के आदेश चाहे हैं।

अतः इशतहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी हितबद्ध व्यक्ति को ग्राम पंचायत घाटू के पंजीकरण रजिस्टर में सायल पुत्र मोहम्मद अली का नाम दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी 17-04-2023 को प्रातः 10 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जा करके नाम दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 17-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील नित्थर, जिला कुल्लू (हि0प्र0)।

**In the Court of Sh. Vikas Shukla, H.A.S., Marriage Officer-cum-Sub-Divisional
Magistrate, Kullu, District Kullu (H.P.)**

In the matter of :

1. Raghav Verma s/o Sh. Madan Gopal Verma, r/o House No. 22, Ward No. 1, Near Viragyan Bhawan Ramshilla, Tehsil & District Kullu (H.P.).

2. Shreya Aggarwal d/o Sh. Sunil Aggarwal, r/o House No. 102 GH- 104F, Sector-20, Panchkula Haryana
.. Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 16 of Special Marriage Act, 1954.

Raghav Verma and Shreya Aggarwal have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 09-03-2023 and they are living as husband and wife since then, hence their marriage may be registered under Act *ibid*.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 15-04-2023. The objection received after 15-04-2023 will not be entertained and marriage will be registered accordingly.

Issued today on 15-03-2023 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Kullu, District Kullu (H.P.).

ब अदालत उप-मण्डल दण्डाधिकारी, निरमण्ड, जिला कुल्लू (हि0 प्र0)

गुर दयाल पुत्र भदरू राम, निवासी तूनन, फाटी तूनन, तहसील निरमण्ड, जिला कुल्लू (हि0प्र0)

प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

उनवान मुकद्दमा : जेर धारा 8(4) अधिनियम, 1996 के अन्तर्गत विवाह पंजीकरण करने बारे।

उनवान मुकद्दमा प्रार्थना-पत्र जेर धारा 8(4) हि0 प्र0 विवाह अधिनियम, 1996 के अन्तर्गत इस न्यायालय में श्री गुर दयाल पुत्र भदरू राम, निवासी तूनन, फाटी तूनन, तहसील निरमण्ड, जिला कुल्लू (हि0प्र0) ने उक्त अधिनियम के अन्तर्गत प्रार्थना-पत्र गुजार कर निवेदन किया है कि उसका विवाह श्रीमती प्रेमा देवी c/o श्यामपति, निवासी कोठी, डा0 व तहसील रिकांगपिओ, जिला किन्नौर हाल पत्नी गुर दयाल पुत्र भदरू राम, निवासी तूनन, फाटी तूनन, तहसील निरमण्ड, जिला कुल्लू (हि0प्र0) के साथ हिन्दू रिवाजानुसार दिनांक 02-05-2002 को हुआ था। अज्ञानता के कारण निश्चित अवधि में अपना विवाह ग्राम पंचायत तूनन में दर्ज नहीं करा सका और इस विषय में उसने अपना शपथ पत्र भी प्रस्तुत किया है। प्रार्थी ने ग्राम पंचायत तूनन में उसका विवाह पंजीकरण रजिस्टर में विवाह पंजीकृत करने के आदेश जारी करने का अनुरोध कर रखा है।

इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को गुर दयाल पुत्र भदरू राम, निवासी तूनन, फाटी तूनन, तहसील निरमण्ड, जिला कुल्लू (हि0प्र0) के साथ श्रीमती प्रेमा देवी c/o श्यामपति, निवासी कोठी, डा0 व तहसील रिकांगपिओ, जिला किन्नौर हाल पत्नी गुर दयाल पुत्र भदरू राम, निवासी तूनन, फाटी तूनन, तहसील निरमण्ड, जिला कुल्लू (हि0प्र0) के विवाह का कोई किसी प्रकार का एतराज हो तो दिनांक 18-04-2023 तक अधोहस्ताक्षरी के कार्यालय में हाजिर होकर लिखित व मौखिक एतराज प्रस्तुत करें उक्त तारीख के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उपरोक्त

गुर दयाल पुत्र भदरू राम के साथ श्रीमती प्रेमा देवी c/o श्यामपति, निवासी कोठी, डा0 व तहसील रिकांगपिओ, जिला किन्नौर हाल पत्नी गुर दयाल पुत्र भदरू राम के विवाह पंजीकृत करने बारे किसी का कोई एतराज नहीं है तथा सचिव ग्राम पंचायत तुनन को विवाह पंजीकृत करने के आदेश पारित कर दिए जायेंगे।

आज दिनांक 16-03-2023 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
उप-मण्डल दण्डाधिकारी,
निरमण्ड, जिला कुल्लू (हि0 प्र0)।

CHANGE OF NAME

I, Chainga Lama d/o Karpa Lama, r/o Ward No. 3, Beasa More, P. O. Dhalpur, Tehsil & District Kullu, H.P. I have changed my name from Chainga to Chainga Lama. In future I must be know as Chainga Lama. Concerned noted.

CHAINGA LAMA
d/o Karpa Lama,
r/o Ward No. 3, Beasa More,
P. O. Dhalpur, Tehsil & District Kullu, H.P.